राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शनिवार, 17 मार्च, 2018 / 26 फाल्गुन, 1939

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 22nd *September,* 2017

No. Shram (A) 6-4/2017 (Awards).—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act,1947, the Governor, Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court,

Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No	Reference/ Application	Title	Section
1.	Ref. 70/2016	Sh. Des Raj *v/s* The Resident Engineer, HPSEB Division Jeori, Ganvi Power House, District Shimla H.P.	10
2.	Ref. 85/2016	Sh. Ranjeet Singh *v/s* -do-	10
3.	Ref. 87/2016	Sh. Shyam Lal *v/s* -do-	10
4.	Ref. 84/2016	Sh. Roop Singh *v/s* –do-	
5.	Ref. 95/2016	Sh. Padam Dev *v/s* Senior Executive Engineer, Electrical Division No.1, HPSEB, Kasumpti, Shimla, H.P.	10
6.	Ref. 19/2017	Sh. Hans Raj Sharma *v/s* The Registrar, Dr. Y. S. Parmar University, Nauni, Solan H.P.	10
7.	Ref. 81/2017	Sh. Jitender Kumar *v/s* Chief Engineer, Commercial, HPSEB Ltd. Shimla & Anr.	10
8.	Ref. 39/2017	Contractor's Workers *v/s* M/s Akron India (p) Ltd. Nihalgarh, Panta Sahib, District Sirmaur, H.P. & Anr.	10
9.	Ref. 125/2010	Sh. Pankaj Kumar *v/s* M/s Biogenetioc Drugs (P) Ltd. Jharmajri, Solan, H.P.	10
10.	Ref. 97/2017	The President and General Secretary, Himachal Futuristic Communication Ltd. Group Mazdoor Sangh *v/s* The Factory Manager, Himachal Futuristic Communication Ltd., Chambaghat. District Solan, H.P.	10
11.	Ref. 111/2010	Sh. Nathu Ram & Ors. *v/s* M/s Asla Security Services, SCO No.-88, Sector-35-C, Chandigarh & Anr.	10
12.	Ref. 112/2010	Sh. Balwant Rai *v/s* -do-	
13.	Ref. 113/2010	Sh. Munna Lal *v/s* -do-	10
14.	Ref. 110/2010	Smt. Nirmla Devi *v/s* M/s Asla Security Services, SCO No.-88, Sector-35-C, Chandigarh & Anr.	10
15.	Ref. 21/2012	Sh. Sandeep Singh *v/s* M/s Colgate Pamolive India Ltd., Jharmajri, Baddi, District Solan, H.P.	10

By order,
R. D. DHIMAN, IAS
Pr. Secretary (Lab. & Emp.).

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref No. 70 of 2016

Instituted on 2-8-2016

Decided on 31-8-2017

Des Raj s/o Sh. Gauri Dutt, r/o V.P.O. Chaba, Tehsil Sunni, District Shimla, H.P

. .*Petitioner*.

Vs.

The Resident Engineer, HPSEB Division Jeori, Ganvi Power House, District Shimla, H.P.

. .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Neel Kamal Sood, Advocate

For respondent : Shri Sudhir Negi, Advocate *vice* Shri Ramakant Sharma, Advocate

AWARD

The reference for adjudication, sent by the appropriate Government, is as under:

"Whether alleged termination of services of Shri Des Raj s/o Sh. Gauri Dutt, r/o VPO Chaba, Tehsil Sunni, Distt. Shimla, H.P. during January, 1993 by the Resident Engineer, Ganvi Power House Division, H.P.S.E.B. Jeori, Distt. Shimla, H.P., who had worked as beldar on daily wages only for 207½ days during October, 1991 to January, 1993 and has raised his industrial dispute after more than 16 years allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 207 ½ days during 1991 to 1993 and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation, the above ex-worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that initially *w.e.f.* 1989 he was appointed as Class-IV employee on daily wages basis with the respondent and worked as such till 1993 and thereafter his services were orally terminated without any reason and without serving any prior notice as required under law and also without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further stated that after the appointment of petitioner, he worked at various places under respondent and his services were terminated without serving any prior notice under Section 25-F of the Act and without paying any compensation. It is also stated that many juniors namely Geeta Ram, Om Dutt, Girdhari Lal, Lal Chand, Ravinder Kumar, Kumar Lal, Umeed Ram, Kanshi Ram, Om Prakash, Jiva Nand, Ranveer Singh to the petitioner were retained and their services had been regularized and the services of the petitioner have been terminated despite the fact that he had completed 240 days in twelve calendar months and even preceding to the date of his oral termination. It is stated that the petitioner made several requests seeking re-employment by visiting the office of the respondent number of

times but despite assurance, he was not re-engaged. Against this back-drop a prayer has been made that directions be issued to the respondent to re-instate the petitioner in service along-with all consequential service benefits including back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the petitioner has not approached this Court with clean hands, that the petition is hopelessly time barred etc. On merits, it has been asserted that initially the petitioner was engaged on 8-10-1991 and he had worked with the respondent upto 24-1-1993 and he never completed 240 days in each calendar year and that his services were never terminated who had left the job on his own, hence, he is not entitled for any prior notice and compensation as required as per the Act. It is denied that the persons junior to the petitioner have been retained and after his termination fresh hands are engaged. It is further denied that the petitioner visited the office of respondent for his re-engagement. It is asserted that the petitioner has raised the present dispute after a gap of 23 years. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 19.12.2016.

1. Whether the termination of the services of petitioner by the respondent during Jan., 1993 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the claim petition is not maintainable as alleged? . .*OPR.*

4. Whether the claim petition is time barred as alleged? . .*OPR.*

5. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1 No

Issue No.2 Becomes redundant

Issue No.3 No

Issue No.4 Yes

Relief Reference answered in favour of the respondent and against the petitioner as per operative part of award.

REASONS FOR FINDINGS

Issues No.1 & 4 :

8. Being interlinked and correlated, both these issues are taken up together for decision.

9. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondent and fresh workers have been engaged in violation of the provisions of Section 25-G and 25-H of the Act.

10. On the other hand, learned counsel for the respondent contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner had never been terminated by the respondent who had left the job at his own and even he had not completed 240 days in any calendar year. He also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, he is not entitled to any relief.

11. To prove issue No.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of judgment passed by the Hon'ble High Court mark PX. In cross-examination, he denied that his services were engaged by the respondent in the year, 1999 on muster roll basis. He admitted that he had worked upto 24-1-1993. He denied that he had worked only for 211 days. He further denied that he had not completed 240 days and that he left the job at his own. He denied that no juniors have been retained by the respondent. He admitted that juniors were retained only on the orders of the Court. He further admitted that he had raised the demand notice after a period of 19 years.

12. PW-2 Shri Yatinder Singh, Assistant Engineer has stated that as per the details Ex. PW-2/A, the petitioner had worked as beldar on muster roll basis at Chabba Sub- Division from 8-10-1991 till 24-1.1993 with breaks and at the relevant time Chabba Sub-Division was under Bhawanagar Division and from 1997 onwards till date Chabba Sub Division is under Jeori Division. In cross- examination he admitted that the petitioner had never completed 240 days in any calendar year. He further stated that no junior to the petitioner has been retained and no fresh hands have been engaged.

13. PW-3 Shri Sandeep Kumar, Senior Assistant has stated that as per the details Ex. PW- 2/A, the petitioner had worked as beldar on muster roll basis under Electrical Division No.2 Shimla from 8-10-1991 till 24-1-1993 with breaks at Chabba Power House Sub Division. He also placed on record the copies of seniority lists of T-Mates Ex. PW-3/A to Ex. PW-3/D. In cross-examination he admitted that the petitioner had never completed 240 days in any calendar year. He further admitted that the seniority lists Ex. PW-3/A to Ex. PW-3/D pertains to Division No.2, Shimla. He also admitted that Division No.2 Shimla and Jeori Division are separate Divisions and the seniority lists are maintained at Division level.

14. On the other hand, the respondent has examined Shri Kanhya Lal Sharma, Resident Engineer, HPSEB Ganvi Power House Jeori as RW-1 who deposed that the petitioner was engaged on 8-10-1991 and he worked till 24-1-1993 for a period of 211 days as per mandays chart Ex. RW-1/A prepared on the basis of muster roll Ex. RW-1/B. He further

deposed that no junior to the petitioner was retained and no fresh hands have been engaged after Jan., 1993 and that the petitioner had never approached the board for his re-engagement and he had never worked for 240 days in any calendar year. In cross-examination, he denied that the petitioner had approached the respondent several times for his re-engagement. He further denied that the persons junior to him namely Geeta Ram, Om Dutt, Girdhari Lal, Lal Chand, Ravinder Kumar, Kumar Lal, Umeed Ram, Kanshi Ram, Om Prakash and Jeeva Nand Division were retained after 1993 in Ghanvi.

14. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked only for 211 days as daily waged beldar with the respondent during the entire period *w.e.f.* 8-10-1991 till 24-1-1993 as per the mandays chart Ex. RW-1/A. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

15. Undisputedly, the petitioner had raised his industrial dispute after a period of more than 16 years. According to the petitioner he was terminated During Jan., 1993. It is also clear from the reference itself that the petitioner had raised the industrial dispute after more than 16 years. Therefore, the position of law in respect of a stale claim is required to be seen.

16. **In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota** Vs. **Mohan Lal**, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D Act but delay in raising industrial dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

17. **In Assistant Executive Engineer, Karnataka** Vs. **Shivalinga reported in (2002) 10 SCC 167**, the services of the employee were terminated on 25-5-1985 and he approached the Labour Officer on 17.3.1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:

> "Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period

of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

18. In Haryana State Coop. Land Development Bank Vs. Neelam reported in (2005) 5 SCC 91, the employee was discontinued from service w.e.f. 30.5.1986 and he raised the demand notice on 30.9.1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:

13. "In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (*supra*), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."

14. "The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom Bharat Forge Co. Ltd. *Vs.* Uttam Manohar Nakate, JT 2005 (1) SC 303], and Kalyan Chandra Sarkar *vs.* Rajesh Ranjan alias Pappu Yadav & Anr. para 42."

15. "In Balbir Singh *vs.* Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :

5. The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh *v.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38].

6. We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

16. "Yet again in Assistant Executive Engineer, Karnataka *vs.* Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

"6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. "In Nedungadi Bank Ltd. (*supra*), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (*supra*), opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A

dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made." (*Emphasis supplied*).

19. **In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation** Vs. **Babu Ram**, the termination was dated 19.9.1983 and the reference was made on 29.8.1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

20. **In Assistant Engineer, CAD Kota** Vs. **Dhan Kunwar reported in (2006) 5 SCC 481**, the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

"9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

21. **In UP State Road Transport Corporation** Vs. **Ram Singh and another (2008) 17 SCC 627,** the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

" 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principle. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been

destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent."

22. **In (2009) 13 SCC 746, State of Karnataka** Vs. **Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

"9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

23. **In a recent judgment of our Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as Bego Devi *Versus* State of H.P. and others decided on 26.10.2016**, it has been held as under:

"9. It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".

24. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations/requests is not sufficient to explain the delay.

25. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated during Jan., 1993 and he raised the present dispute after a period of more than 16 years. In his evidence by way of affidavit Ex. PW-1/A, the petitioner has averred that after his termination he was assured by the respondent that on the availability of work and funds, he would be re-engaged but despite assurance given by the respondent, he was not re-engaged. However, except for his bald statement there is no other evidence on record to suggest as to when the respondent had given him assurance. No documentary evidence has been produced by the petitioner to prove that he had been visiting the respondent for his re-engagement during the period of 16 years. In the opinion of this Court, the explanation furnished by the petitioner for not raising the demand notice within a reasonable period cannot be accepted. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 16 years caused in seeking

reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

26. On merits, from the mandays chart Ex. RW-1/A, it is clear that the petitioner was engaged as daily waged beldar by the respondent on 8.10.1991 and he worked as such till 24.1.1993 for a period of 211 ½ days. The petitioner has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others*** , the Hon'ble Supreme Court has held as under:

> **"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."**

In *AIR* ***2006 S.C. 110 case titled as Surindernagar District Panchayat V/s Dayabhai Amar Singh,*** the Hon'ble Supreme Court has held that:—

> **"In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."**

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. There is no *iota* of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under Section 25-F of the Industrial Disputes Act, 1947 and as such no protection of Section 25-F can be granted to the petitioner.

27. The learned counsel for the petitioner next contended that the respondent had taken the plea of abandonment in its reply but had totally failed to establish such plea by producing any evidence on record. As pointed out earlier, the Hon'ble Supreme Court has held that the delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It has also been held by the **Hon'ble Supreme Court in 2009 (13) SCC 746** that the person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the job. It is difficult for the employer to obtain witness/es who would be competent to give evidence so many years later. It has further been held that lapse of time results in losing the remedy and the right as well and the delay in seeking the reference causes prejudice to both the employer and employee. In the present case also it would not be expected from the respondent to lead evidence and to bring witnesses or to place documents on record to prove after 16 years that the petitioner had abandoned the job at his own. The petitioner had raised the industrial dispute after lapse of about 16 years and remained silent during this period without any plausible explanation, and as such, no relief can be granted to him after a lapse of about 16 years as the delay in the present case is certainly fatal.

28. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors and had engaged fresh hands who are still working as such the respondent had violated the principles of "last come first go". In his deposition, Shri Sandeep Kumar PW-3, has tendered in evidence the seniority lists of T/mates Ex. PW-3/A to Ex. PW-3/D. However, as observed earlier, the petitioner had raised the demand notice after a period of 16 years as such there is no question of consideration of equal treatment with the junior persons who have allegedly been shown in Ex. PW-3/A to Ex. PW-3/D. To take this view, I am fortified with the judgment of our own **Hon'ble High Court in CWP No. 4515/2012 decided on 13.6.2012, titled as Suraj Mani** Vs. **HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 16 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of Sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 16 years.

29. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 16 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered accordingly.

Issue No.2 :

30. Since, the petitioner has failed to prove Issue No.1, above, this issue becomes redundant.

Issue No. 3 :

31. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief :

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 31st Day of August, 2017.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref. No. 85 of 2016

Instituted on 14-9-2016

Decided on 31-8-2017

Ranjeet Singh s/o Shri Karam Singh, r/o Village Tarar, P.O Basantpur, Tehsil Sunni District Shimla, H.P. . .*Petitioner.*

Vs.

The Resident Engineer, HPSEB Division Jeori, Ganvi Power House, District Shimla, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Neel Kamal Sood, Advocate

For respondent : Shri Sudhir Negi, Advocate *vice* Shri Ramakant Sharma, Advocate

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether alleged termination of services of Sh. Ranjeet Singh son of Sh. Karam Singh, r/o Village Taror, P.O. Basantpur, Tehsil Sunni, Distt. Shimla, H.P. during November, 1993 by the Resident Engineer, Ganvi Power House Division, HPSEB Jeori, Distt. Shimla, H.P., who had worked for 80 days only during 1993 and has raised his industrial dispute after about 16 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the working period of 80 days only and delay of about 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that initially *w.e.f.* 1992 he was appointed as Class-IV employee on daily wages basis with the respondent and worked as such till 1993 and thereafter his services were orally terminated without any reason and without serving any prior notice as required under law and also without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further stated that after the appointment of petitioner, he worked at various places under respondent and his services were terminated without serving any prior notice under Section 25-F of the Act and without paying any compensation. It is also stated that many juniors namely Geeta Ram, Om Dutt, Girdhari Lal, Lal Chand, Ravinder Kumar, Kumar Lal, Umeed Ram, Kanshi Ram, Om Prakash, Jiva Nand, Ranveer Singh to the petitioner were retained and their services had been regularized and the services of the petitioner have been terminated despite the fact that he had completed 240 days in twelve calendar months and even preceding to the date of his oral termination. It is stated that the petitioner made several requests seeking re-employment by visiting the office of the respondent number of times but of no avail. Against this back-drop a prayer has been made that directions be issued to the

respondent to re- instate the petitioner in service along-with all consequential service benefits including back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the petition is hopelessly time barred and that the petitioner has not approached this Court with clean hands, estoppel and that the petition is not maintainable. On merits, it has been asserted that initially the petitioner was engaged on 25-7-1992 and he had worked with the respondent upto 24-11-1993 and he never completed 240 days in each calendar year and that his services were never terminated who had left the job on his own, hence, he is not entitled for any prior notice and compensation as required as per the Act. It is denied that the persons junior to the petitioner have been retained and after his termination fresh hands are engaged. It is further denied that the petitioner visited the office of respondent for his re-engagement. It is asserted that the petitioner has raised the present dispute after a gap of 23 years. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner re-affirmed his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 20-5-2017:—

1. Whether the termination of the services of petitioner during November, 1993 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . .*OPP.*

2. If Issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the petition is not maintainable as alleged? . .*OPR.*

4. Whether the petition is hit by delay and latches as alleged? . .*OPR.*

5. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1 No

Issue No.2 Becomes redundant

Issue No.3 No

Issue No.4 Yes

Relief Reference answered in favour of the respondent and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No.1 & 4 :

8. Being interlinked and correlated, both these issues are taken up together for decision.

9. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under Section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondent and fresh workers have been engaged in violation of the provisions of Section 25-G and 25-H of the Act.

10. On the other hand, learned counsel for the respondent contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner had never been terminated by the respondent who had left the job at his own and even he had not completed 240 days in any calendar year. He also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, he is not entitled to any relief.

11. To prove Issue No.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of judgment passed by the Hon'ble High Court mark PX. In cross-examination, he admitted that he was engaged on muster roll basis on 25-7-1992 as beldar and worked till 24-11-1993. He denied that he had worked only for 80 days. He further denied that he had left the job at his own and that he had not completed 240 days in any calendar year and therefore he was not entitled for any notice. He further admitted that he had raised the demand notice after 16 years. He denied that no junior person has been kept by the Board and that the juniors have been kept only upon the orders of the Court. He also denied that no fresh hands have been engaged.

12. PW-2 Shri Yatinder Singh, Assistant Engineer has deposed that the petitioner had worked under Chaba Sub-Division during the year, 1992-1993 and Chaba division was under Electrical Division Shimla and from the year, 1997 onwards, Chaba Sub-Division is under Jeori Division. In cross- examination he stated that the petitioner was engaged on 25-7-1992 and he worked till 24-11-1993 only for 80 days. He further stated that the petitioner had never completed 240 days in any calendar year and no junior to him was retained and no fresh hands have been engaged.

13. PW-3 Shri Sandeep Kumar, Senior Assistant has brought the seniority lists of T/Mates for the year, 2000, 2003, 2006 and 2007 Ex. PW-3/A to Ex. PW-3/D. In cross-examination he admitted that the seniority lists Ex. PW-3/A to Ex. PW-3/D pertains to Division No.2, Kasumpati, Shimla and Kasumpati and Jeori are separate divisions. He further admitted that the seniority lists are maintained only for those workers, who are in continuous service for 8 years. The learned counsel for the petitioner has tendered in evidence the final seniority list of T/Mates in Shimla Electrical Division No.1 Mark P-1.

14. On the other hand, the respondent has examined Shri Kanhya Lal Sharma, Resident Engineer, HPSEB Ganvi Power House Jeori as RW-1 who deposed that the petitioner was engaged on 25-7-1993 and he worked till 25-11-1993 for a period of 80 days as per mandays chart Mark R-1. He further deposed that no junior to the petitioner was retained and no fresh

hands have been engaged after November, 1993 and that the petitioner had never approached the board for his re- engagement and he had never worked for 240 days in any calendar year. In cross-examination, he denied that the petitioner had approached the respondent for several times for his re-engagement. He further denied that the juniors were retained after the termination of the petitioner and that the petitioner had completed 240 days before his termination.

15. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked only for 80 days as daily waged beldar with the respondent during the entire period *w.e.f.* 25-7-1993 till 24-11-1993 as per the mandays chart Mark R-1. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

16. Undisputedly, the petitioner had raised his industrial dispute after a period of more than 16 years. According to the petitioner he was terminated during November, 1993. It is also clear from the reference itself that the petitioner had raised the industrial dispute after more than 16 years. Therefore, the position of law in respect of a stale claim is required to be seen.

17. **In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub-Division Kota** Vs. **Mohan Lal,** it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

18. **In Assistant Executive Engineer, Karnataka** Vs. **Shivalinga reported in (2002) 10 SCC 167**, the services of the employee were terminated on 25.5.1985 and he approached the Labour Officer on 17.3.1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:

> "Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of

back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

19. In Haryana State Coop. Land Development Bank Vs. Neelam reported in (2005) 5 SCC 91, the employee was discontinued from service w.e.f. 30-5-1986 and he raised the demand notice on 30.9.1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:

13. "In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (*supra*), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."

14. "The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom Bharat Forge Co. Ltd. *Vs.* Uttam Manohar Nakate, JT [2005 (1) SC 303], and Kalyan Chandra Sarkar *vs.* Rajesh Ranjan alias Pappu Yadav & Anr. para 42."

15. In Balbir Singh *vs.* Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :

"5. The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh *v.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38].

6. We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. Yet again in Assistant Executive Engineer, Karnataka *vs.* Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

"6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. In Nedungadi Bank Ltd. (*supra*), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (*supra*), opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a

lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made." (*Emphasis supplied*).

20. **In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation Vs. Babu Ram**, the termination was dated 19-9-1983 and the reference was made on 29-8-1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

21. **In Assistant Engineer, CAD Kota Vs. Dhan Kunwar reported in (2006) 5 SCC 481**, the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

"9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

22. **In UP State Road Transport Corporation Vs. Ram Singh and another (2008) 17 SCC 627**, the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

" 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to

reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principal. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent."

23. **In (2009) 13 SCC 746, State of Karnataka** Vs. **Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

"9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

24. **In a recent judgment of our H on'bl e High Court delivered in CWP Mo. 1912 of 2016 titled as Bego Devi** Versus **State of H.P. and others decided on 26.10.2016**, it has been held as under:

"9. It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".

25. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations/requests is not sufficient to explain the delay.

26. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated during November, 1993 and he raised the present dispute after a period of more than 16 years. In the his evidence by way of affidavit Ex. PW-1/A, the petitioner has stated that after his termination he was assured that as and when his services would be required, he will be re-engaged but despite assurance given by the respondent, he was not reinstated. However, except for his bald statement there is no other evidence on record to suggest as to when the respondent had given him the assurance for re-engagement. No documentary evidence has been produced by the petitioner to prove that he had been visiting the respondent for his re-engagement during the period of 16 years. In the opinion of this Court, the explanation furnished by the petitioner for not

raising the demand notice within a reasonable period cannot be accepted. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 16 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

27. On merits, from the mandays chart Mark R-1, it is clear that the petitioner was engaged as daily waged beldar by the respondent on 25-9-1992 and he worked as such till 24-11-1993 for a period of 80 days. The petitioner has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. There is no material on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika*** Vs. ***Babuji Gabhaji Thakore and others*** , the Hon'ble Supreme Court has held as under:

> **"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."**

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat*** V/s ***Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:—

> **"In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."**

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. There is no iota of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under Section 25-F of the Industrial Disputes Act, 1947 and as such no protection of Section 25-F can be granted to the petitioner.

28. The learned counsel for the petitioner next contended that the respondents have taken the plea of abandonment in their reply but they have totally failed to establish such plea by producing any evidence on record. As pointed out earlier, the Hon'ble Supreme Court has held that the delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It has also been held by the **Hon'ble Supreme Court in 2009 (13) SCC 746** that the person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the job. It is difficult for the employer to obtain witness/es who would be competent to give evidence so many years later. It has further been held that lapse of time results in losing the remedy and the right as well and the delay in seeking the reference causes prejudice to both the employer and employee. In the present case also it would not be expected from the respondent to lead evidence and to bring witnesses or to place documents on record to prove after 16 years that

the petitioner had abandoned the job at his own. The petitioner had raised the industrial dispute after lapse of about 16 years and remained silent during this period without any plausible explanation, and as such, no relief can be granted to him after a lapse of about 16 years as the delay in the present case is certainly fatal.

29. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors and had engaged fresh hands who are still working as such the respondent had violated the principles of "last come first go". In his deposition, Shri Sandeep Kumar PW-3, has tendered in evidence the seniority lists of T/mates Ex. PW-3/A to Ex. PW-3/D. The learned counsel for the petitioner also tendered in evidence the final seniority list of T/Mates in Shimla Electrical Division No.1 mark P-1. However, as observed earlier, the petitioner had raised the demand notice after a period of 16 years as such there is no question of consideration of equal treatment with the junior persons who have allegedly been shown in Ex. PW-3/A to Ex. PW-3/D and mark P-1. To take this view, I am fortified with the judgment of our own **Hon'ble High Court in CWP No. 4515/2012 decided on 13.6.2012, titled as Suraj Mani** Vs. **HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 16 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of Sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 16 years.

30. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 16 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered accordingly.

Issue No.2.

31. Since, the petitioner has failed to prove Issue No.1, above, this issue becomes redundant.

Issue No.3.

32. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief :

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 31st Day of August, 2017.

(SUSHIL KUKREJA),
Presiding Judge, H.P. Industrial Tribunal-cum- *Labour Court, Shimla.*

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref. No. 87 of 2016

Instituted on 14.9.2016

Decided on 31-8-2017

Shyam Lal s/o late Shri Balak Ram, r/o Village Mungna, P.O Chaba, Tehsil Sunni, District Shimla, HP. . .*Petitioner.*

Vs

The Resident Engineer, HPSEB Division Jeori, Ganvi Power House, District Shimla, H.P. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Neel Kamal Sood, Advocate

For respondent : Shri Sudhir Negi, Advocate *vice* Shri Ramakant Sharma, Advocate

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether alleged termination of services of Sh. Shyam Lal s/o Late Sh. Balak Ram, r/o Village Mungna, P.O. Chaba, Tehsil Sunni, Distt. Shimla, H.P. during November, 1993 by the Resident Engineer, Ganvi Power House Division, HPSEB Jeori, Distt. Shimla, H.P., who had worked for 42 days only during 1993 and has raised his industrial dispute after more than 16 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the working period of 42 days only and delay or more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that initially *w.e.f.* 1992 he was appointed as Class-IV employee on daily wages basis with the respondent and worked as such till 1993 and thereafter his services were orally terminated without any reason and without serving any prior notice as required under law and also without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further stated that after the appointment of petitioner, he worked at various places under respondent and his services were terminated without serving any prior notice under section 25-F of the Act and without paying any compensation. It is also stated that many juniors namely Geeta Ram, Om Dutt, Girdhari Lal, Lal Chand, Ravinder Kumar, Kumar Lal, Umeed Ram, Kanshi Ram, Om Prakash, Jiva Nand, Ranveer Singh to the petitioner were retained and their services had been regularized and the services of the petitioner have been terminated despite the fact that he had completed 240 days in twelve calendar months and even preceding to the date of his oral termination. It is stated that the petitioner made several requests seeking re-employment by visiting the office of the respondent number of times but of no avail. Against this back-drop a prayer has been made that directions be issued to the respondent to re- instate the petitioner in service along-with all consequential service benefits including back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the petition is hopelessly time barred and that the petitioner has not approached this Court with clean hands, estoppel and that the petition is not maintainable. On merits, it has been asserted that initially the petitioner was engaged on 25-9-1992 and he had worked with the respondent upto 24-11-1993 and he never completed 240 days in each calendar year and that his services were never terminated who had left the job on his own, hence, he is not entitled for any prior notice and compensation as required as per the Act. It is denied that the persons junior to the petitioner have been retained and after his termination fresh hands are engaged. It is further denied that the petitioner visited the office of respondent for his re-engagement. It is asserted that the petitioner has raised the present dispute after a gap of 24 years. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner re-affirmed his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 20.5.2017

1. Whether the termination of the services of petitioner during November, 1993 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . .*OPP.*

2. If Issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the petition is not maintainable as alleged? . .*OPR.*

4. Whether the petition is hit by delay and latches as alleged? . .*OPR.*

5. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1 No

Issue No.2 Becomes redundant

Issue No.3 No

Issue No.4 Yes

Relief Reference answered in favour of the respondent and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No.1 & 4 :

8. Being interlinked and correlated, both these issues are taken up together for decision.

9. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under Section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondent and fresh workers have been engaged in violation of the provisions of Section 25-G and 25-H of the Act.

10. On the other hand, learned counsel for the respondent contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner had never been terminated by the respondent who had left the job at his own and even he had not completed 240 days in any calendar year. He also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, he is not entitled to any relief.

11. To prove Issue No.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of judgment passed by the Hon'ble High Court mark PX. In cross-examination, he admitted that he was engaged on muster roll basis on 25-9-1992 as beldar and worked till 24-11-1993. He denied that he had worked only for 48 days. He further denied that he had left the job at his own. He also denied that he had not completed 240 days in any calendar year and therefore he was not entitled for any notice. He further admitted that he had raised the demand notice after 16 years. He denied that no junior person has been kept by the Board and that the juniors have been kept only upon the orders of the Court. He also denied that no fresh hands have been engaged.

12. PW-2 Shri Yatinder Singh, Assistant Engineer has deposed that the petitioner had worked under Chaba Sub-Division and from the year, 1997 onwards, Chaba Sub-Division is under Jeori Division. In cross-examination he stated that the petitioner was engaged on 25-9-1992 and he worked till 24-11-1993 only for 48 days. He further stated that the petitioner had never completed 240 days in any calendar year and no junior to him was retained and no fresh hands have been engaged.

13. PW-3 Shri Sandeep Kumar, Senior Assistant has brought the seniority lists of T/Mates for the year 2000, 2003, 2006 and 2007 Ex. PW-3/A to Ex. PW-3/D. In cross-examination he admitted that the seniority lists Ex. PW-3/A to Ex. PW-3/D pertains to Division No.2, Kasumpati, Shimla and Kasumpati and Jeori are separate divisions. He further admitted that the seniority lists are maintained only for those workers, who are in continuous service for 8 years. The learned counsel for the petitioner has tendered in evidence the final seniority list of T/Mates in Shimla Electrical Division No.1 Mark P-1.

14. On the other hand, the respondent has examined Shri Kanhya Lal Sharma, Resident Engineer, HPSEB Ganvi Power House Jeori as RW-1 who deposed that the petitioner was engaged on 25.9.1992 and he worked till 25.11.1993 for a period of 48 days as per mandays chart mark R-1. He further deposed that no junior to the petitioner was retained and no fresh hands have been engaged after November, 1993 and that the petitioner had never approached the board for his re-engagement and he had never worked for 240 days in any calendar year. In cross-examination, he denied that the petitioner had approached the respondent several times for his re-engagement. He further denied that the juniors were retained after the termination of the petitioner and that the petitioner had completed 240 days before his termination.

15. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked only for 48 days as daily waged beldar with the respondent during the entire period *w.e.f.* 25-9-1992 till 24-11-1993 as per the mandays chart Mark R-1. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

16. Undisputedly, the petitioner had raised his industrial dispute after a period of more than 16 years. According to the petitioner he was terminated during November, 1993. It is also clear from the reference itself that the petitioner had raised the industrial dispute after more than 16 years. Therefore, the position of law in respect of a stale claim is required to be seen.

17. **In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota** Vs. **Mohan Lal**, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

18. **In Assistant Executive Engineer, Karnataka** Vs. **Shivalinga reported in (2002) 10 SCC 167,** the services of the employee were terminated on 25.5.1985 and he approached the Labour Officer on 17.3.1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:

> "Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available

to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

19. In Haryana State Coop. Land Development Bank Vs. Neelam reported in (2005) 5 SCC 91, the employee was discontinued from service w.e.f. 30-5-1986 and he raised the demand notice on 30.9.1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:

"13. In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (*supra*), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."

14. "The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom Bharat Forge Co. Ltd. *Vs.* Uttam Manohar Nakate, JT [2005 (1) SC 303], and Kalyan Chandra Sarkar *vs.* Rajesh Ranjan alias Pappu Yadav & Anr. para 42."

15. In Balbir Singh *vs.* Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :

"5. The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38].

6. We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

16. Yet again in Assistant Executive Engineer, Karnataka *vs.* Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

"6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. In Nedungadi Bank Ltd. (*supra*), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (*supra*) , opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made." (*Emphasis supplied*).

20. **In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation** Vs. **Babu Ram**, the termination was dated 19.9.1983 and the reference was made on 29.8.1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

> "10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

21. **In Assistant Engineer, CAD Kota** Vs. **Dhan Kunwar reported in (2006) 5 SCC 481**, the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

> "9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……."

22. In UP State Road Transport Corporation Vs. **Ram Singh and another (2008) 17 SCC 627,** the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

> "7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principle. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent."

23. In (2009) 13 SCC 746, State of Karnataka Vs. **Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

> "9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work.……

24. In a recent judgment of our **Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as Bego Devi** Versus **State of HP and others decided on 26.10.2016**, it has been held as under:

> "9. It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".

25. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations/requests is not sufficient to explain the delay.

26. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated during November, 1993 and he raised the present dispute after a period of more than 16 years. In the his evidence by way of affidavit Ex. PW-1/A, the petitioner has averred that after his termination he was assured that as and when his services would be required, he will be called but despite assurance given by the respondent, he was not reinstated. However, except for his bald statement there is no other evidence on record to suggest as to when the respondent had given him assurance. No documentary evidence has been produced by the petitioner to prove that he had been visiting the respondent for his re-engagement during the period of 16 years. In the opinion of this Court, the explanation furnished by the petitioner for not raising the demand notice within a reasonable period cannot be accepted. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 16 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

27. On merits, from the mandays chart Mark R-1, it is clear that the petitioner was engaged as daily waged beldar by the respondent on 25.9.1992 and he worked as such till 24.11.1993 for a period of 48 ½ days. The petitioner has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. There is no material on record which could show that the petitioner has completed 240 working days in twelve calendar

months preceding his termination. In ***2009 (120) FLR 1007 in case titled as Relip Nagarpalika*** *Vs.* ***Babuji Gabhaji Thakore and others*** , the Hon'ble Supreme Court has held as under:

> **"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."**

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat*** *V/s* ***Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:—

> **"In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."**

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. There is no *iota* of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under Section 25-F of the Industrial Disputes Act, 1947 and as such no protection of Section 25-F can be granted to the petitioner.

28. The learned counsel for the petitioner next contended that the respondents have taken the plea of abandonment in their reply but they have totally failed to establish such plea by producing any evidence on record. As pointed out earlier, the Hon'ble Supreme Court has held that the delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It has also been held by the **Hon'ble Supreme Court in 2009 (13) SCC 746** that the person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the job. It is difficult for the employer to obtain witness/es who would be competent to give evidence so many years later. It has further been held that lapse of time results in losing the remedy and the right as well and the delay in seeking the reference causes prejudice to both the employer and employee. In the present case also it would not be expected from the respondent to lead evidence and to bring witnesses or to place documents on record to prove after 16 years that the petitioner had abandoned the job at his own. The petitioner had raised the industrial dispute after lapse of about 16 years and remained silent during this period without any plausible explanation, and as such, no relief can be granted to him after a lapse of about 16 years as the delay in the present case is certainly fatal.

29. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors and had engaged fresh hands who are still working as such the respondent had violated the principles of "last come first go". In his deposition, Shri Sandeep Kumar PW-3, has tendered in evidence the seniority lists of T/mates Ex. PW-3/A to Ex. PW-3/D. The learned counsel for the petitioner also tendered in evidence the final seniority list of T/Mates in Shimla Electrical Division No.1 mark P-1.

However, as observed earlier, the petitioner had raised the demand notice after a period of 16 years as such there is no question of consideration of equal treatment with the junior persons who have allegedly been shown in Ex. PW-3/A to Ex. PW-3/D and mark P-1. To take this view, I am fortified with the judgment of our own **H on'ble Hi gh Court i n CWP No. 4515/2012 decided on 13-6-2012, titled as Suraj Mani** Vs. **HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 16 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 16 years.

30. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 16 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered accordingly.

Issue No.2.

31. Since, the petitioner has failed to prove issue no.1, above, this issue becomes redundant.

Issue no.3.

32. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief:

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 31st Day of August, 2017.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum- *Labour Court, Shimla.*

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref. No. 84 of 2016

Instituted on 14-9-2016

Decided on 31-8-2017

Roop Singh s/o Late Shri Gauri Dutt, r/o Village and P.O Chaba, Tehsil & District Shimla, HP. . .*Petitioner.*

VS.

The Resident Engineer, HPSEB Division Jeori, Ganvi Power House, District Shimla, H.P. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Neel Kamal Sood, Advocate

For respondent : Shri Sudhir Negi, Advocate *vice* Shri Ramakant Sharma, Advocate

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether alleged termination of services of Sh. Roop Singh s/o Late Sh. Gauri Dutt, r/o Village & P.O. Chaba, Tehsil & Distt. Shimla, H.P. during December, 1992 by the Resident Engineer, Ganvi Power House Division, HPSEB Jeori, Distt. Shimla, H.P., who had worked for 44 days only during 1992 and has raised his industrial dispute after more than 16 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the working period of 44 days only and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that initially *w.e.f.* 1988 he was appointed as Class-IV employee on daily wages basis with the respondent and worked as such till 1994 and thereafter his services were orally terminated without any reason and without serving any prior notice as required under law and also without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further stated that after the appointment of petitioner, he worked at various places under respondent and his services were terminated without serving any prior notice under Section 25-F of the Act and without paying any compensation. It is also stated that many juniors namely Geeta Ram, Om Dutt, Girdhari Lal, Lal Chand, Ravinder Kumar, Kumar Lal, Umeed Ram, Kanshi Ram, Om Prakash, Jiva Nand, Ranveer Singh to the petitioner were retained and their services had been regularized and the services of the petitioner have been terminated despite the fact that he had completed 240 days in twelve calendar months and even preceding to the date of his oral termination. It is stated that the petitioner made several requests seeking re-employment by visiting the office of the respondent number of times but of no avail. Against this back-drop a prayer has been made that directions be issued to the respondent to re- instate the petitioner in service along-with all consequential service benefits including back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the petition is hopelessly time barred and that the petitioner has not approached this Court with clean hands, estoppel and that the petition is not maintainable. On merits, it has been asserted that initially the petitioner was engaged on 25.10.1992 and he had worked with the respondent upto 24.12.1992 and he never completed 240 days in each calendar year and that his services were never terminated who had left the job on his own, hence, he is not entitled for any prior notice and compensation as required as per the Act. It

is denied that the persons junior to the petitioner have been retained and after his termination fresh hands are engaged. It is further denied that the petitioner visited the office of respondent for his re-engagement. It is asserted that the petitioner has raised the present dispute after a gap of 24 years. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 20.5.2017

1. Whether the termination of the services of petitioner during December, 1992 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . .*OPP.*

2. If Issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the petition is not maintainable as alleged? . .*OPR.*

4. Whether the petition is hit by delay and latches as alleged? . .*OPR.*

5. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under :

Issue No.1	No
Issue No.2	Becomes redundant
Issue No.3	No
Issue No.4	Yes
Relief	Reference answered in favour of the respondent and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No.1 & 4 :

8. Being interlinked and correlated, both these issues are taken up together for decision.

9. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under Section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondent and fresh workers have been engaged in violation of the provisions of Section 25-G and 25-H of the Act.

10. On the other hand, learned counsel for the respondent contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner had never been terminated by the respondent who had left the job at his own and even he had not completed 240 days in any calendar year. He also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, he is not entitled to any relief.

11. To prove Issue No.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of judgment passed by the Hon'ble High Court mark PX. In cross-examination, he admitted that he was engaged on muster roll basis on 25-10-1992 as beldar and worked till 24-12-1992. He further admitted that he had worked only for 44 days. He denied that he had left the job at his own. He admitted that he had not completed 240 days in any calendar year and therefore he was not entitled for any notice. He further admitted that he had raised the demand notice after 16 years. He denied that no junior person has been kept by the Board and that the juniors have been kept only upon the orders of the Court. He also denied that no fresh hands have been engaged.

12. PW-2 Shri Yatinder Singh, Assistant Engineer has deposed that the petitioner had worked under Chaba Sub- Division and during the year, 1992, Chaba Division was under Electrical Division Shimla and from the year, 1997 onwards, Chaba Sub-Division is under Jeori Division. In cross-examination he stated that the petitioner was engaged on 25-10-1992 and he worked till 24-12-1992 only for 44 days. He further stated that the petitioner had never completed 240 days in any calendar year and no junior to him was retained and no fresh hands have been engaged.

13. PW-3 Shri Sandeep Kumar, Senior Assistant has brought the seniority lists of T/Mates for the year, 2000, 2003, 2006 and 2007 Ex. PW-3/A to Ex. PW-3/D. In cross-examination he admitted that the seniority lists Ex. PW-3/A to Ex. PW-3/D pertains to Division no.2, Kasumpati, Shimla and Kasumpati and Jeori are separate divisions. He further admitted that the seniority lists are maintained only for those workers, who are in continuous service for 8 years. The learned counsel for the petitioner has tendered in evidence the final seniority list of T/Mates in Shimla Electrical Division no.1 Mark P-1.

14. On the other hand, the respondent has examined Shri Kanhya Lal Sharma, Resident Engineer, HPSEB Ganvi Power House Jeori as RW-1 who deposed that the petitioner was engaged on 25.10.1992 and he worked till 25.12.1992 for a period of 44 days as per mandays chart Ex. RW-1/A. He further deposed that no junior to the petitioner was retained and no fresh hands have been engaged after December, 1992 and that the petitioner had never approached the board for his re- engagement and he had never worked for 240 days in any calendar year. In cross-examination, he denied that the petitioner had approached the respondent several times for his re-engagement. He further denied that the juniors were retained after the termination of the petitioner and that the petitioner had completed 240 days before his termination.

15. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked only for 44 days as daily waged beldar with the respondent during the entire period *w.e.f.* 25-10-1992 till 24-12-1992 as per the mandays chart Ex. RW-1/A. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

16. Undisputedly, the petitioner had raised his industrial dispute after a period of more than 16 years. According to the petitioner he was terminated during December, 1992. It is also clear from the reference itself that the petitioner had raised the industrial dispute after more than 16 years. Therefore, the position of law in respect of a stale claim is required to be seen.

17. In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub-Division Kota Vs. **Mohan Lal, it has been held by the** Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

18. In Assistant Executive Engineer, Karnataka Vs. **Shivalinga reported in (2002) 10 SCC 167,** the services of the employee were terminated on 25.5.1985 and he approached the Labour Officer on 17.3.1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:

> "Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

18. In Haryana State Coop. Land Development Bank Vs. Neelam reported in (2005) 5 SCC 91, the employee was discontinued from service w.e.f. 30-5-1986 and he raised

the demand notice on 30-9-1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:

> "13. In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (*supra*), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."
>
> 14. "The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom Bharat Forge Co. Ltd. *vs.* Uttam Manohar Nakate, JT [2005 (1) SC 303], and Kalyan Chandra Sarkar *vs.* Rajesh Ranjan alias Pappu Yadav & Anr. para 42."
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> 15. In Balbir Singh *vs.* Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :
>
> > "5. The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh *v.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38].
> >
> > 6. We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. Yet again in Assistant Executive Engineer, Karnataka *vs.* Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

> "6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. "In Nedungadi Bank Ltd. (*supra*), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (*supra*), opined :

> "6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made." (*Emphasis supplied*).

20. In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation Vs. **Babu Ram,** the termination was dated 19.9.1983 and the reference was made on 29.8.1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

> "10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a

reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

21. In Assistant Engineer, CAD Kota *Vs.* Dhan Kunwar reported in (2006) 5 **SCC 481**, the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

"9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

22. In UP State Road Transport Corporation Vs. **Ram Singh and another (2008) 17 SCC 627,** the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

" 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principal. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent. "

23. In (2009) 13 SCC 746, State of Karnataka Vs. Ravi Kumar the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

"9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……"

24. In a recent judgment of our Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as Bego Devi Versus **State of H.P. and others decided on 26.10.2016,** it has been held as under:

> **"9. It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".**

25. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations/requests is not sufficient to explain the delay.

26. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated during December, 1992 and he raised the present dispute after a period of more than 16 years. In his evidence by way of affidavit Ex. PW-1/A, the petitioner has averred that after his termination he was assured that as and when his services would be required, he will be re-engaged but despite assurance given by the respondent, he was not reinstated. However, except for his bald statement there is no other evidence on record to suggest as to when he was assured by the respondent for his reinstatement. No documentary evidence has been produced by the petitioner to prove that he had been visiting the respondent for his re-engagement during the period of 16 years. In the opinion of this Court, the explanation furnished by the petitioner for not raising the demand notice within a reasonable period cannot be accepted. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 16 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

27. On merits, from the mandays chart Ex. RW-1/A, it is clear that the petitioner was engaged as daily waged beldar by the respondent on 25.10.1992 and he worked as such till 24.12.1992 for a period of 44 days. The petitioner has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. There is no material on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. In ***2009 (120) FLR 1007 in case titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others*** , the Hon'ble Supreme Court has held as under:

> **"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."**

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat v/s Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:-

"In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. There is no *iota* of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Rather, the petitioner himself admitted in cross-examination that he had worked only for 44 days and had not completed 240 days in any calendar year. Hence, the case of the petitioner does not fall under Section 25-F of the Industrial Disputes Act, 1947 and as such no protection of Section 25-F can be granted to the petitioner.

28. The learned counsel for the petitioner next contended that the respondents have taken the plea of abandonment in their reply but they have totally failed to establish such plea by producing any evidence on record. As pointed out earlier, the Hon'ble Supreme Court has held that the delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It has also been held by the **Hon'ble Supreme Court in 2009 (13) SCC 746** that the person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the job. It is difficult for the employer to obtain witness/es who would be competent to give evidence so many years later. It has further been held that lapse of time results in losing the remedy and the right as well and the delay in seeking the reference causes prejudice to both the employer and employee. In the present case also it would not be expected from the respondent to lead evidence and to bring witnesses or to place documents on record to prove after 16 years that the petitioner had abandoned the job at his own. The petitioner had raised the industrial dispute after lapse of about 16 years and remained silent during this period without any plausible explanation, and as such, no relief can be granted to him after a lapse of about 16 years as the delay in the present case is certainly fatal.

29. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors and had engaged fresh hands who are still working as such the respondent had violated the principles of "last come first go". In his deposition, Shri Sandeep Kumar PW-3, has tendered in evidence the seniority lists of T/mates Ex. PW-3/A to Ex. PW-3/D. The learned counsel for the petitioner also tendered in evidence the final seniority list of T/Mates in Shimla Electrical Division No.1 mark P-1. However, as observed earlier, the petitioner had raised the demand notice after a period of 16 years as such there is no question of consideration of equal treatment with the junior persons who have allegedly been shown in Ex. PW-3/A to Ex. PW-3/D and mark P-1. To take this view, I am fortified with the judgment of our own **Hon'ble High Court in CWP No. 4515/2012 decided on 13.6.2012, titled as Suraj Mani** Vs. **HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 16 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of Sections 25-G and 25-H of the Act cannot be granted to the petitioner.

If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 16 years.

30. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 16 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered accordingly.

Issue No.2 :

31. Since, the petitioner has failed to prove Issue No.1, above, this issue becomes redundant.

Issue No.3 :

32. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief:

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 31st Day of August, 2017.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum- *Labour Court, Shimla.*

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref. No. 95 of 2016

Instituted on 5-10-2016

Decided on 31.8.2017

Padam Dev s/o Sh. Tani Mal, r/o Village Shahut, P.O. Khaneol Bagra, Tehsil Karsog, Distt. Mandi, H.P. . .*Petitioner.*

VS.

Senior Executive Engineer, Electrical Division No. 1, HPSEB, Kasumpti Shimla-171009.
. .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Neel Kamal Sood, Advocate

For respondent : Shri Sudhir Negi, Advocate *vice* Shri Ramakant Sharma, Advocate

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether alleged termination of services of Sh. Padam Dev s/o Sh. Tani Mal, r/o Village Shahut, P.O. Khaneol Bagra, Tehsil Karsog, Distt. Mandi, H.P. during February, 1993 by the Senior Executive Engineer, Shimla Electrical Division No.1, HPSEB Ltd. Shimla-171009, who had worked as beldar on daily wages only for 93 days during 1992-93 and has raised his Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 93 days and delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that initially *w.e.f.* 1.1.1992 he was appointed as Class-IV employee on daily wages basis with the respondent and worked as such till 1993 and thereafter his services were orally terminated without any reason and without serving any prior notice as required under law and also without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further stated that after the appointment of petitioner, he worked at various places under respondent and his services were terminated without serving any prior notice under Section 25-F of the Act and without paying any compensation. It is also stated that many juniors to the petitioner namely Molak Ram, Rajesh, Prem Singh, Narender Singh, Om Prakash, Bhim Sen, Devi Ram, Mohinder and many others were retained and their services had been regularized and the services of the petitioner have been terminated despite the fact that he had completed 240 days in twelve calendar months and even preceding to the date of his oral termination. It is stated that the petitioner made several requests seeking re-employment by visiting the office of the respondent number of times but despite assurance, he was not re-engaged. Against this back-drop a prayer has been made that directions be issued to the respondent to re-instate the petitioner in service alongwith all consequential service benefits including back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken regarding maintainability, suppression of material facts, that the petition is hopelessly barred by time and abandonment. On merits, it has been asserted that the petitioner was engaged as beldar on daily wages basis for a specific work and he worked for brief spells since 26-10-1992 to 25-2-1993 and had completed 93 days only and thereafter he left the work at his own without any intimation to the respondent, hence, there is no violation of the Act. It is further asserted that the petitioner had never visited the HPSEBL authorities and had not made any oral as well as written request for his re-engagement and that no junior persons to him have been retained. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. On the pleadings of the parties, the following issues were framed on 14-6-2017.

1. Whether the termination of the services of petitioner during Feb., 1993 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If Issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? ...*OPP.*

3. Whether the petition is time barred as alleged? . .*OPR.*

4. Whether the petition is not maintainable as alleged? . .*OPR.*

5. Relief

5. I have heard the learned counsel for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under :

Issue No. 1 No

Issue No.2 Becomes redundant

Issue No.3 Yes

Issue No.4 No

Relief Reference answered in favour of the respondent and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No.1 & 3 :

7. Being interlinked and correlated, both these issues are taken up together for decision.

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under Section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondent and fresh workers have been engaged in violation of the provisions of Section 25-G and 25-H of the Act.

9. On the other hand, learned counsel for the respondent contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner had never been terminated by the respondent who had left the job at his own and even he had not completed 240 days in any calendar year. He also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, he is not entitled to any relief.

10. To prove Issue No.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of judgment passed by the Hon'ble High Court mark PX, provisional seniority list of T-mate mark PX-1, final seniority lists of T-mate mark PX-2 and mark PX-3. In cross-examination, he expressed his ignorance that he

was engaged by the board on muster roll basis on 26.10.1992. He denied that he had worked till 25-2-1993 for a period of 93 days in total. He further denied that he had not completed 240 days in any calendar year and that he had left the job at his own. He also denied that no junior was retained by the board but admitted that juniors have been kept on the orders of the Court. He further admitted that he raised the demand notice after 21 years.

11. PW-2 Shri Hemant Kumar, Senior Assistant has produced on record the copy of seniority list and copy of award passed by Labour Court, Shimla Mark P-1 and Mark P-2. He deposed that the persons mentioned at Serial No. 43 onwards in the list Mark P-1 have been engaged after the year, 1993 and the persons mentioned from Serial No. 43 to 46 have been engaged as per the orders of the Court and from Serial No. 47 to 51 have been engaged in the handicapped quota. He further deposed that the person at Serial No. 52 has been engaged by the board itself. In cross-examination, he admitted that the petitioner had worked only for 93 days and that he had never completed 240 days in any calendar year.

12. On the other hand, the respondent has examined one Shri Sanjeet Kumar, Senior Assistant, who deposed that *vide* authority letter Ex. RW-1/A he has been authorized to depose in the Court. He further stated that the petitioner was engaged on 26.10.1992 and as per mandays chart mark R- 1, he had worked till 25.2.1993 for a period of 93 days. He also stated that no junior to the petitioner was retained and no fresh hands have been engaged after Feb., 1993 and that the petitioner had never approached the board for his re-engagement. In cross-examination, he denied that the petitioner had approached the respondent several times for his re-engagement. He admitted that juniors have been retained and fresh hands have been engaged but volunteered that the juniors have been retained by the orders of the Court and fresh hands have been engaged under the disability quota. He denied that the petitioner had completed 240 days before his termination.

13. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked only for 93 days as daily waged beldar with the respondent during the entire period *w.e.f.* 26.10.1992 till 25-2-1993 as per the mandays chart Mark R-1. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

14. Undisputedly, the petitioner had raised his industrial dispute after a period of more than 16 years. According to the petitioner he was terminated during Jan., 1993. It is also clear from the reference itself that the petitioner had raised the industrial dispute after more than 21 years. Therefore, the position of law in respect of a stale claim is required to be seen.

15. **In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota** Vs. **Mohan Lal**, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D Act but delay in raising Industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of

exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

16. In Assistant Executive Engineer, Karnataka Vs. **Shivalinga reported in (2002) 10 SCC 167**, the services of the employee were terminated on 25.5.1985 and he approached the Labour Officer on 17.3.1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:

"Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

17. In Haryana State Coop. Land Development Bank Vs. Neelam reported in (2005) 5 SCC 91, the employee was discontinued from service w.e.f. 30-5-1986 and he raised the demand notice on 30.9.1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:

13. "In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the

same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (*supra*), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."

14. "The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom Bharat Forge Co. Ltd. *Vs.* Uttam Manohar Nakate, JT [2005 (1) SC 303], and Kalyan Chandra Sarkar *vs.* Rajesh Ranjan alias Pappu Yadav & Anr. para 42."

15. In Balbir Singh *vs.* Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :

> "5. The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh *v.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38].
>
> 6. We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. Yet again in Assistant Executive Engineer, Karnataka *vs.* Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

> "6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the

relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. In Nedungadi Bank Ltd. (*supra*), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (*supra*), opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made." (*Emphasis supplied*).

18. **In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation** Vs. **Babu Ram,** the termination was dated 19.9.1983 and the reference was made on 29.8.1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

19. **In Assistant Engineer, CAD Kota Vs. Dhan Kunwar reported in (2006) 5 SCC 481,** the delay was of about eight years in raising the dispute. The Labour Court granted

reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

> "9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

20. In UP State Road Transport Corporation Vs. **Ram Singh and another (2008) 17 SCC 627,** the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

> "7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principle. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent."

21. In (2009) 13 SCC 746, State of Karnataka Vs. **Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

> "9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

22. **In a recent judgment of our Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as Bego Devi Versus State of HP and others decided on 26-10-2016,** it has been held as under:

> "9. It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".

23. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed

merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations/requests is not sufficient to explain the delay.

24. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated during Feb., 1993 and he raised the present dispute after a period of more than 21 years. In his evidence by way of affidavit Ex. PW-1/A, the petitioner has averred that after his termination he was assured by the respondent that on the availability of work and funds, he would be re-engaged but despite assurance given by the respondent, he was not re-engaged. However, except for his bald statement there is no other evidence on record to suggest as to when the respondent had given him assurance. No documentary evidence has been produced by the petitioner to prove that he had been visiting the respondent for his re-engagement during the period of 21 years. In the opinion of this Court, the explanation furnished by the petitioner for not raising the demand notice within a reasonable period cannot be accepted. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 21 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

25. On merits, from the mandays chart Mark R-1, it is clear that the petitioner was engaged as daily waged beldar by the respondent on 26.10.1992 and he worked as such till 25.2.1993 for a period of 93 days. The petitioner has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. There is no material on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. In ***2009 (120) FLR 1007 in case titled as Relip Nagarpalika*** *Vs.* ***Babuji Gabhaji Thakore and others*** , the Hon'ble Supreme Court has held as under:

> **"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."**

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat V/s Dayabhai Amar Singh,*** *the* Hon'ble Supreme Court has held that:—

> **"In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."**

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged

on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. There is no *iota* of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under Section 25-F of the Industrial Disputes Act, 1947 and as such no protection of Section 25-F can be granted to the petitioner.

26. The learned counsel for the petitioner next contended that the respondents have taken the plea of abandonment in their reply but they have totally failed to establish such plea by producing any evidence on record. As pointed out earlier, the Hon'ble Supreme Court has held that the delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It has also been held by the **Hon' ble Supreme Court in 2009 (13) SCC 746** that the person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the job. It is difficult for the employer to obtain witness/es who would be competent to give evidence so many years later. It has further been held that lapse of time results in losing the remedy and the right as well and the delay in seeking the reference causes prejudice to both the employer and employee. In the present case also it would not be expected from the respondent to lead evidence and to bring witnesses or to place documents on record to prove after 21 years that the petitioner had abandoned the job at his own. The petitioner had raised the industrial dispute after lapse of about 21 years and remained silent during this period without any plausible explanation, and as such, no relief can be granted to him after a lapse of about 21 years as the delay in the present case is certainly fatal.

27. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors and had engaged fresh hands who are still working as such the respondent had violated the principles of "last come first go". However, as observed earlier, the petitioner had raised the demand notice after a period of 21 years as such there is no question of consideration of equal treatment with the juniors persons who have allegedly been retained. To take this view, I am fortified with the judgment of our own **Hon'ble High Court in CWP No. 4515/2012 decided on 13.6.2012, titled as Suraj Mani** Vs. **HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 21 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of Sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 21 years.

28. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 21 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered accordingly.

Issue No.2 :

29. Since, the petitioner has failed to prove Issue No.1, above, this issue becomes redundant.

Issue No.4 :

30. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate

government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 31st Day of August, 2017.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

16-8-2017

Present: None for petitioner

Shri I. S Narwal, Advocate *vice* csl. for respondent

As per the Track Consignment Report, the notice issued to the petitioner through registered post has been duly served. Case called twice but none appeared for petitioner. It is 10:50 AM. Be awaited.

(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal Labour Court, Shimla.

Case called again

Present: None for petitioner
Shri I.S Narwal, Advocate vice csl. for respondent

It is 12:45 PM. Case called again but none appeared on behalf of petitioner. Be called after lunch.

(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal Labour Court, Shimla.

Case called after lunch.

Present: None for petitioner
Shri I. S Narwal, Advocate *vice* csl. for respondent.

It is 3.30 PM. Case called repeatedly in pre and post lunch sessions but the petitioner has failed to appear before this Court despite the fact as per Track Consignment Report, the notice issued through registered post for the service of the petitioner has been delivered at his address given in the reference which clearly shows that he is not interested to pursue his case. Hence, this Court is left with no other alternative but to decide the case on the basis of material whichever is available on file. For, today, the case has been listed for the service of the petitioner but despite having been served, the petitioner has failed to appear before this Court. The following reference has been sent by the appropriate government for adjudication to this Court:

> **"Whether demand of Sh. Hans Raj Sharma s/o Sh. Jeet Ram Sharma through Sh. Sunder Singh Sippy (A.R.) Quarter No. 100/3, Roda Sector No. 2, Distt. Bilaspur, H.P. *vide* demand notice dated 30.07.2015 (copy enclosed), for regularization of his services as per time to time policy of Himachal Pradesh State Government for regularization, *w.e.f.* 01-04-2012 by the Registrar, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, Distt. Solan-173230, H.P., is legal and justified? If yes, what amount of back wages, seniority, past service benefits and other reliefs the above worker is entitled to from the above employer?"**

As per the reference, the petitioner has raised the demand notice dated 30.7.2015 for regularization of his services as per time to time policy of Himachal Pradesh State Government for regularization *w.e.f.* 1.4.2012. But despite having been served the petitioner has failed to appear before this Court. Therefore, for the failure of the petitioner to appear before this Court and to pursue his case arising out of reference, it cannot be said that the demand raised by the petitioner *vide* demand notice dated 1.4.2012 is legal and justified. Hence, the reference sent by the appropriate government for adjudication to this Court is answered against the petitioner. Let a copy of this order/award be sent the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal Labour Court, Shimla.

23-08-2017.

Present: None for the petitioner
Shri Sudhir Negi, Ld. Csl. for respondent No-1
None for respondent No-2

Case called twice but none appeared on behalf of the petitioner. It is 10.45 AM. Be awaited.

(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal Labour Court, Shimla.

Case called again

23-08-2017.

Present: None for the petitioner
Shri Sudhir Negi, Ld. Csl. for respondent No. 1.
None for respondent No. 2.

Case called again but none appeared on behalf of the petitioner. It is 12.35 PM. Be called after lunch.

(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal Labour Court, Shimla.

Case called after lunch

23.08.2017.

Present: None for the petitioner
Shri Sudhir Negi, Ld. Csl. for respondent No. 1.
None for respondent No-2.

It is 3.30 PM. Case called repeatedly in pre and post lunch sessions but none appeared on behalf of petitioner. In the light of aforesaid facts, it appears that at present the petitioner is not interested to pursue his claim. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:

> ***"Whether termination of services of Sh. Jitender Kumar s/o Sh. Jogeshwar Dutt, r/o Ridge Wood Palace, Near Micro Wave Station, Ghora Kothi, Jakhu, Shimla-2*** *w.e.f.* ***07-8-2015 by the Employer/Chief Engineer Commercial, HPSEB Ltd. Shimla-4, Kumar House, Shimla- 171004, employed on outsource basis through Sh. Vijay Sharma, M/s SGI Enterprises, Kumar Bhawan Shanti Vihar (below Cemetery) Road, Sanjauli, Shimla-171006 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"***

From the aforesaid reference is the clear that the petitioner has alleged his termination *w.e.f.* 07-08-2015 to be illegal but for today none appeared on behalf of the petitioner which seems that he is not interested to pursue the present reference. Therefore, due to the non appearance of the petitioner and in the absence of any material on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondents *w.e.f.* 07-08-2015. Hence, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal Labour Court, Shimla.

11.8.2017

Present: None for petitioner.
Shri Amit Sharma, Advocate for respondent No.1
Shri Arun Verma, Advocate for respondents No. 2 to 5

Case called twice but none appeared for petitioner. It is 10.50 AM. Be awaited.

(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal Labour Court, Shimla.

Case called again

Present: None for petitioner
Shri Amit Sharma, Advocate for respondent No.1
Shri Arun Verma, Advocate for respondents No. 2 to 5.

It is 12.45 PM. Case called again but none appeared on behalf of petitioner. Be called after lunch.

(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal Labour Court, Shimla.

Case called after lunch

Present: None for petitioner
Shri Amit Sharma, Advocate for respondent No.1.
Shri Arun Verma, Advocate for respondents No. 2 to 5.

It is 3.20 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his counsel appeared before this Court despite the fact as per Track Consignment report, the notice issued through registered post for the service of the petitioner had been delivered at the addresses given in the reference itself which clearly shows that the petitioner is not interested to pursue their case. Hence, this Court is left with no other alternative but to decide the case on the basis of material whichever is available on file. For, today, the case has been listed for the service of petitioner but despite having been served, the petitioner has failed to appear before this Court. The following reference has been sent by the appropriate government for adjudication to this Court:

"Whether action of (i) The Factory Manager, M/s Akorn India Pvt. Ltd. Nihalgarh, Tehsil Paonta Sahib, Distt. Sirmaur, H.P. (Principal Employer), (ii) Sh. Babu Ram Village Dandiwala, P.O. Rajpur, Paonta Sahib, Distt. Sirmour, H.P. (contractor), (iii) Sh. Bhupinder Singh M/s Dashmesh Febricator, Village Bhatawali, Paonta Sahib, Distt. Sirmaur, H.P. (contractor), (iv) Sh. Sanjeev Kumar s/o Sh. Chatter Singh, Village Kanshipur, Paonta Sahib, Distt. Sirmaur, H.P. (contractor) (v) Sh. Anup Sharma s/o Sh. Guman Sharma, H.No. 184/3, Taruwala, Paonta Sahib, Distt. Sirmour, H.P. (contractor) to refuse payment of bonus for the year 2014-15 to the contractual workers of M/s Akorn India Pvt. Ltd. Nihalgarh, Tehsil Paonta Sahib, Distt. Sirmour, H.P., as per demand notice dated 06.11.2015 (copy enclosed), is legal and justified? If not, what amount of bonus/rate of bonus the aggrieved workmen are entitled to from the above management?"

As per the reference, the petitioner has alleged the refusal of payment of bonus for the year 2014-15 to the contractual workers as per demand notice dated 6-11-2015 to be illegal and unjustified. But, despite having been served none appeared on behalf of petitioner before this Court. Therefore, for the failure of the petitioner to appear before this Court and to pursue the case arising out of reference, it cannot be said that the refusal of payment of bonus for the year, 2014-15 to the contractual workers as per demand notice dated 6-11-2015 by the respondents is illegal and unjustified. Hence, the reference sent by the appropriate government for adjudication to this Court is answered against the petitioner. Let a copy of this order/award be sent the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal Labour Court, Shimla.

10-8-2017

Present: None for petitioner
Shri Rajeev Sharma, Advocate for respondent

Case called twice but none appeared for petitioner. It is 10.50 AM. Be awaited.

(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal Labour Court, Shimla.

Case called again

Present: None for petitioner
Shri Rajeev Sharma, Advocate for respondent

It is 12.45 PM. Case called again but none appeared on behalf of petitioner. Be called after lunch.

(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal Labour Court, Shimla.

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA

Case called after lunch

Present: None for petitioner
Shri Rajeev Sharma, Advocate for respondent

It is 3.30 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his counsel appeared before this Court despite the fact as per Track Consignment report, the notice issued through registered post for the service of the petitioner has been delivered at his residential address which clearly shows that he is not interested to pursue his case. Hence, this Court is left with no other alternative but to decide the case on the basis of material whichever is available on file. For, today, the case has been listed for cross-examination of RW-1 to RW-3 but despite having been served, the petitioner failed to appear before this Court. The following reference has been sent by the appropriate government for adjudication to this Court:

> **"Whether dismissal order dated 25.01.2010 of Sh. Pankaj Kumar s/o Sh. Lagan Dass by the management of M/s Biogentics Drugs Pvt. Ltd. Village Jharmajri, P.O. Barotiwala, Tehsil Baddi, Distt. Solan, H.P. after serving charge sheet & after holding enquiry, is legal and justified? If not, to what back wages, service benefits & relief Sh. Pankaj Kumar S/O Sh. Lagan Dass is entitled to?"**

As per the reference, the petitioner has alleged his dismissal order dated 25.1.2010 after serving chargesheet and after holding enquiry to be illegal and unjustified. But despite having been served the petitioner has failed to appear before this Court. Therefore, for the failure of the petitioner to appear before this Court and to pursue his case arising out of reference, it cannot be said that the dismissal order of the petitioner dated 25.1.2010 after serving chargesheet and after holding enquiry are illegal and unjustified. Hence, the reference sent by the appropriate government for adjudication to this Court is answered against the petitioner. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM- **LABOUR COURT, SHIMLA**

5-8-2017.

Present: Shri Anoop Kumar Sharma, General Secretary with Shri J.C Bhardwaj, AR for petitioner union.

Shri G.S Rana, Assistant Manager, Admin. with Shri Rahul Mahajan, Advocate for respondent.

At this stage it has been stated by Shri Anoop Kumar Sharma, General Secretary of petitioner union that the union had entered into a settlement Ex. C-1 with the management on 4-7-

2017 and as per the aforesaid settlement, the demands raised by their union *vide* demand notice dated 28-3-2016, out of which the present reference has arisen, have been accepted by the management. He further stated that now there is no dispute with the management, therefore, the present reference be decided in terms of settlement Ex. C-1. To this effect his statement recorded separately.

Vide separate statement Shri G.S Rana, Assistant Manager Admin. of respondent company stated that the management and workers union had entered into a settlement Ex. C-1 with respect to the demand notice dated 28.3.2016 and now there is no dispute between the parties and the reference be decided in terms of settlement Ex. C-1.

Therefore, in view of the aforesaid statements, I am satisfied that a lawful compromise as per settlement Ex. C-1 has been effected between the parties. Hence, the reference sent by the appropriate government for adjudication is answered in terms of settlement Ex.C-1 which shall form part of this award/order. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal-cum-Labour Court, Shimla Camp at Solan.

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA

Ref. No. 111 of 2010

Instituted on 27-10-2010

Decided on 30-8-2017

1. Kiran Widow of late Shri Nathu Ram
2. Rajkumar s/o late Shri Nathu Ram
3. Priti d/o Late shri Nathu Ram
4. Sanjeev Kumar s/o late Shri Nahtu Ram
5. Sandeep Kumar s/o late Shri Nathu Ram, through his natural guardian *i.e* mother Smt. Kiran w/o late Shri Nathu Ram.

All r/o house No. 282 c/o Rattan Pashi Bheron ki Sair, Tipra Road Kalka, District Panchkula Haryana. . .*Petitioners.*

VERSUS

1. M/s Asia Security Services, SCO No. 88, Sector-35C Chandigarh UT through, its Proprietor Shri Inder Jeet Singh Lally.

2. M/s Federal Mogul Bearing India Ltd., Sector-2, Parwanoo, District Solan, H.P. through its General Manager . .*Respondents.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.K. Khidtta, Advocate.

For respondent No.1 : Ms. Monika Singh, Advocate

For respondent No.2 : Shri Rahul Manajan, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"**Whether the verbal termination of the services of Shri Munna Lal s/o Shri Chhote Lal workman by (1) Shri A.S. Lali, S/o Shri Lal Singh Lali, M/s Asia Security Services SCO No. 88, Sector-35-C, Chandigarh UT (Contractor) and (2) The General Manager, Federal Mogul Bearings India Ltd., Plot no.5, Sector-2, Parwanoo, District Solan, H.P. (Principal Employer) w.e.f. 8.9.2009 without serving chargesheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the above employer?"**

2. Before, I proceed further, it is important to mention here that initially the reference was sent by the appropriate government on behalf of deceased Shri Nathu Ram but during the pendency of reference, he died and thereafter the case on his behalf was pursued through his legal heirs who have filed amended claim petition before this Court. Briefly, the case of the petitioners is that deceased Shri Nathu Ram was engaged as Safai Karamchari by the Gabriel India Ltd., company presently known as M/s Federal Mogul Bearings India Ltd., (hereinafter referred to as respondent No.2) in the year, 1984 and worked as such till 8.9.2009 but later on he (Nathu Ram) was shown to be engaged through respondent no.1 by the respondent No.2 just to frustrate his rightful claim and now his legal heirs and to save themselves from the liability of the workers. That the deceased Nathu Ram being the member of Gabriel Employees Union, INTUC, Parwanoo, District Solan, H.P. along-with other workers used to settle their claim including increase in the salary of the workers by way of long term settlement with the respondents and after the expiry of settlement, new settlement used to be executed between the parties and the salary and other benefits used to be increased/given to the workers as per the price rise and keeping in view the other relevant factors by the respondents and even the workers also used to perform their duties as agreed in the settlement. It is further stated that last long term settlement between the workers union and respondents was executed for the period from 1-1-2003 to 31-12-2007 and after the expiry of the settlement, the workers through their union approached the respondents for the settlement of their demands but no settlement was arrived at between the parties and ultimately the workers were forced to file the demand notice. It is also stated that during the pendency of the demand notice, the services of the deceased Nathu Ram were terminated orally by the respondents *w.e.f.* 8-9-2009 without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) as no notice or pay in lieu of notice and retrenchment compensation has been paid by the respondents to him and even the services of deceased were not re-engaged despite having been requested for his reinstatement. That the work and conduct of the deceased always remained up to the satisfaction of the officials of the respondents and he had completed 240 days in each calendar year and his

services had been terminated without assigning any reason and after his termination, the respondents have engaged new persons, in violation of the provisions of Section 25-H of the Act, who are still working with them and even the work which the deceased was performing is still available with the respondent No.2. That while terminating the services of the deceased Nathu Ram, the respondent company has violated the provisions of Section 25-F, 25-G, 25-H and 25-N of the Act and that the deceased was a workman as defined in the Act as he used to work manually. Against this back-drop a prayer has been made that the termination of the services of the deceased *w.e.f.* 8-9-2009 be set aside and quashed and the legal heirs of the deceased are held entitle to receive all the service benefits including back-wages.

3. The respondent No.1, adopted the reply already filed to the un-amended petition and had not filed the fresh reply to the amended claim petition. In the reply filed by respondent No.1 preliminary objections had been taken *qua* maintainability, estoppel, concealment of material facts, no cause of action and that there is No employer and employee relationship between the petitioner (now deceased) and respondent No.1. On merits, it has been asserted that the petitioner (now deceased) was the employee of respondent No. 2 and no settlement has ever been entered between the petitioner and respondent no.1 at any point of time. It is denied that the services of the petitioner have been orally terminated *w.e.f.* 8-9-2009 by the respondent No.1. That the respondent no.2 without giving the two month's notice terminated the contract by violating the terms of the contract that the respondent No. 2 is liable to pay the entire benefits, if any, to the petitioner. It is asserted that the petitioner never visited the office of respondent No.1 and being the principal employer, the respondent No. 2 terminated the services of petitioner. The respondent No.1 prayed for the dismissal of the claim petition.

4. The respondent No.2 filed separate reply to the amended claim petition wherein preliminary objections had been taken *qua* maintainability, that there exists no employee and employer relationship between the replying respondent and deceased Nathu Ram and that the contract for deployment of contract labour by the contractor with the respondent No. 2 was not renewed on its expiry and the contractor was asked not to deploy the contract labour *w.e.f.* 8-9-2009. It is submitted that the contractor had entered into an agreement for providing contract labour for security, housekeeping service, courier service, peon and pantry service in terms of agreements dated 5-4-1991 and 25-3-1991 entered between contractor and Gabriel India Ltd., and Gabriel India Ltd. (Engine Bearing Division) was demerged from Gabriel India Ltd., into a separate company *i.e.* M/s Anand Engine Component Ltd. in March, 2007. That M/s Anand Engine Component Ltd. and contractor entered into a fresh agreement dated 5-10-2007 as per which the contractor was to provide the contract labour upto 31-12-2008 and contract would automatically stand expire unless and until further extended on mutually agreed terms and conditions. That in Feb., 2008, Federal Mogul took controlling interest in Anand Engine Component Ltd. and renamed as Federal Mogul Bearing India Ltd., *vide* letter dated 7-9-2009 which was also communicated to the contractor that as the agreement for providing contract labour was not extended in terms of agreements dated 5-4-1991, 25-3-1991 and 5-10-2007, the contractor need not deploy its labour with the respondent No.1 *w.e.f.* 8-9-2009 as the contract was not extended with the contractor. On merits, it has been asserted that the predecessor in interest of petitioner was the employee of contractor and *vide* agreement dated 25-3-1991, Asla Security Services undertook to provide contract labour for security, housekeeping service, courier service, peon and pantry service to Gabriel India Ltd., and also undertook to pay their ESI and EPF and the wages were being paid to the deceased by the contractor and even muster roll, attendance register was being maintained by the contractor. It is further asserted that at no point to time any settlement was signed by Federal Mogul Bearing India Ltd., Gabriel India Ltd. and Anand components Ltd., with contractor, contract employees and Gabriel Employees Union, INTUC as the employees of the contractor were not the employees of respondent No. 2. As the agreements dated 5.4.1991, 25.3.1991 and 5.10.2007 were upto 31.12.2008 and were not extended mutually

thus automatically came to an end and the replying respondent asked the contractor not to deploy the labour *w.e.f.* 8.9.2009 and as such the predecessor in interest of petitioner services were never terminated by the replying respondent and there has been no violation of provisions of the Act as it is the sole responsibility of the contractor to make payment of compensation/salary to him. Since, the predecessor in interest of petitioner was not the employee of respondent No.2, hence, industrial dispute has wrongly been raised against the replying respondent and there is no violation of Section 25-F, G, H and N of the Act as the services of the deceased had been engaged through contractor and the replying respondent is not liable to pay any compensation to the petitioner. The respondent No. 2 also prayed for the dismissal of the claim petition.

5. By filing separate rejoinders to the replies filed by the respondents, the petitioners reaffirmed their allegations by denying those of the respondents.

6. Pleadings of the parties gave rise to the following issues which were struck on 12.7.2013.

1. Whether the verbal termination of the services of Shri Nathu Ram (since deceased) *w.e.f.* 8.9.2009 without serving chargesheet and holding enquiry and complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative to what service benefits the LR's of the deceased are entitled to? . .*OPP.*

3. Whether this petition is neither competent nor maintainable against respondent no.1 as alleged? . .*OPR-1.*

4. Whether this petition is not maintainable against respondent No.2 as alleged? . .*OPR-2.*

5. Relief.

7. Besides having heard the learned counsel for the parties, I have also gone through the written arguments submitted by the petitioners and the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under :

Issue No.1 Yes

Issue No.2 Entitled to lump sum compensation

Issue No.3 No

Issue No.4 No

Relief. Reference answered in favour of the deceased Shri Nathu Ram and against respondent No.2 per operative part of award.

Reasons for findings

Issue No.1

9. Learned Counsel for the petitioners contended that the deceased Nathu Ram was the employee of respondent No.2 as he had been engaged by respondent No.2 and even at the

time of termination of his services there was no contract between respondent No.1 and respondent No.2. He further contended that the deceased had completed more than 240 days in each calendar year, hence, his services could not be terminated without complying with the provisions of Sections 25-F of the Act and even after the termination of his services, the respondent No.2 had engaged fresh hands and retained his juniors in violation of the provisions of Sections 25-G and H of the Act. He also contended that at the time of termination of the services of the deceased, demand notice was pending before the Conciliation Officer and his services had been terminated in violation of the provisions of Section 33 of the Act.

10. On the other hand, Ld. counsel for the respondent No.1 contended that the deceased was not the employee of respondent No.1 as there was no contract/agreement after 31.12.2008 between respondent No.1 and respondent No.2 and as such the services of deceased were never terminated by respondent No.1.

11. Learned counsel for respondent No. 2 contented that for the smooth functioning of the company, the services of the deceased had been engaged through contractor as per agreements executed between respondent No. 1 and 2 and his wages, EPF, ESI, and other benefits were being paid by the contractor. That the respondent No. 2 had no concern with the engagement and disengagement of the deceased. He further contended that since the agreement was not renewed between respondent No.1 and 2, for providing the contract labour, hence, the services of the deceased stood automatically terminated. He also contended that since the services of deceased had not been engaged by the respondent No. 2 company, who had worked with the company through contractor, hence, there is no need to comply with the provisions of the Act by respondent No. 2.

12. To prove their case, the petitioners examined two PWs including Smt. Kiran widow of late Shri Nathu Ram. Smt. Kiran stepped into the witness box as PW-1 to depose that her husband was engaged as safai karamchari by the Gabriel India Ltd. in the year, 1984 who worked as such till 8.9.2009 continuously. That Gabriel India Ltd. is now known as Federal Mogul Company and her husband was working under respondent No.2 company and her husband was the member of workers union known as Gabriel Employees Union. From the date of engagement of her husband, settlements used to be arrived at as per which their salaries and allowances used to be increased. The copies of settlements are Ex.PW-1/A and Ex. PW-1/B. Thereafter, her husband raised demand notice Ex.PW-1/C to the company through union which is still pending before the Conciliation Officer. That the services of her husband were terminated without issuance of any notice and conducting any enquiry. The work which her husband was performing is still available with the company and even the company had engaged fresh persons after the termination of her husband. Her husband was unemployed from the date of his termination till the date of his death. She also tendered in evidence the death certificate of her husband Ex. PW-1/D and LR's certificate Ex. PW-1/E. When cross-examined on behalf of respondent No. 1, she admitted that the services of her husband were terminated in the year, 2009 by the respondent No. 2 and the salary to her husband used to be paid by the company. She further admitted that neither she nor her husband received any notice from the company. In cross-examination on behalf of respondent No. 2, she admitted that her husband was working with Asla Security. She denied that her husband was having no concern with respondent No. 2 company.

13. PW-2 Shri Dwarka Nath, has stated that he was the President of the employees union which is duly registered and the deceased Nathu Ram was the active member of the union being safai karamchari and initially the deceased had been engaged by the company M/s Gabriel India Ltd., and thereafter his services were being shown through bogus contractor. He further stated that the wages of the deceased were being paid by the company and the wages of the workers used to be enhanced as per settlement arrived at between the union and the

management and on the expiry of the date of settlement Ex. PW-1/B, they filed the demand notice Ex. PW-1/C to the company, the copy of which was also sent to the Labour Inspector, Parwanoo and Labour-*cum*-Conciliation Officer, Solan upon which the company was called by the Conciliation Officer but despite that the company failed to arrive at settlement which is still pending and the settlement was to be effected from December, 2007. The demands as per Ex. PW-1/C are genuine in view of the increase in the price index and the termination of the services of the deceased were totally illegal and against the provisions of the Act. In cross-examination on behalf of respondent No.1, he admitted that when respondent No.2 took over Gabriel India Ltd., Parwanoo all the employees were also taken by it (respondent No. 2) and that since then the respondent No. 2 is making the payment of wages to the employees. He admitted that when the deceased was disengaged no intimation was given to the union and that the demands as per Ex. PW-1/C are honored/fulfilled by respondent No. 2. When cross-examined on behalf of respondent no.2, he denied that he is not the employee of the respondent no.2. He admitted that his services had been terminated by the company after obtaining permission of this Court. He denied that initially the deceased was the employee of M/s Vikram Services Parwanoo, Prop. Shri B.M. Malhotra (contractor). He denied that the deceased was the employee of M/s Asla Security (respondent No.1) since April, 1991 and that PF/ESI contribution/wages were also being paid by respondent No.1. He further denied that the services of the deceased were not deputed with company in terms of agreements dated 5.4.1991, 25.12.2003 and 5.10.2007 and that the agreement to provide contract labour by contractor was terminated *vide* letter dated 7.9.2009. He also denied that the deceased was not the employee of respondent No.2.

14. On the contrary, the respondent No.1 examined one witness. RW-1 Shri Inderjit Singh, Prop. of respondent No.1 tendered his affidavit Ex. RA-1 in evidence wherein he reiterated almost all the averments as made in the reply. In cross-examination, on behalf of respondent No.2 he admitted that he started managing the affairs of Asla Security Services after May, 2011. He denied that before May, 2011 he was not aware of the contracts between Asla Security and its clients. He admitted that his father as Prop. of Asla Security Services had entered into an agreement with Anand Engine Components to provide contract labour for security, house-keeping etc. and his father being Prop. of Asla Security Services also entered into an agreement with Gaberial India Ltd., to provide contractual labour and he also used to go to disburse the salaries in various companies and their contract with Gabriel India came to an end in the year, 2008. He admitted that Asla Security Pvt. Ltd. was paying wages, maintaining the entire records under labour laws, making payments of ESI, EPF to the contractual employees deputed with Gabriel and Anand Engine Ltd. He expressed his ignorance that agreement Ex. PW-1/B had been entered between his father and the workers deployed with Gabriel India Ltd. and Gabriel Employees Union. He expressed his ignorance that upto 7.9.2009, the Prop. of Asia Security Services had paid salary to the petitioner and also other contributions such as ESI, EPF. He also expressed his ignorance that on 7.9.2009, respondent No.2 had told Asla Security Services not to send the deceased/contract labour *w.e.f.* 8.9.2009. He denied that the petitioner and other contract workers are the employee of Asla Security Services and that entire payment of gratuity and compensation was to be paid by the Asla Security Services. When cross-examined on behalf of petitioner, he admitted that the petitioner (now deceased) was not their employee and that he was the employee of respondent No.2 and they are liable to pay all salaries and all other benefits. He further admitted that Asla Security Services had no contract with FMBL to provide them contractual labour including Safai Karamchari and that the duty from deceased was taken by respondent No.2. He also admitted that entire documents, as aforesaid, were not executed in his presence nor he was party to the same.

15. Respondent No.2 examined six witnesses. RW-2 Shri Rishabh, from PF office produced the record *w.e.f.* April, 2009 till 2010. He stated that other record had been destroyed *vide* certificate Ex. RW-2/1/A. He also produced Form No.6 Ex.RW-2/1/B. In cross-

examination on behalf of petitioners he could not state as to who had deposited EPF as per Ex. RW-2/1-B. He denied that in the name of Asla Security anyone can deposit the amount as shown in Ex. RW-2/1/B but explained that the employer code is of Asia Security. When cross-examined on behalf of respondent No.2, he denied that as per Ex. RW-2/1/B, it cannot be said that who had deposited the money.

16. RW-3 Shri Rohit Garg, Finance Executive with respondent No. 2 has stated that the copies of bills raised by Asla Security along-with the challans of PF, ESI, list of workers working under Asla Security and the payments made by cheque to Asla Security by Federal Mogul Bearings Ltd., are Ex. RW-3/A to Ex. RW-3/P and Ex. RW-3/Q is the summary of the entire payment made to Asla Security Services in respect of the bills raised. In cross-examination on behalf of respondent No.1, he expressed his ignorance that who had signed the bills Ex. RW- 3/A to Ex. RW-3/P. When cross-examined on behalf of petitioners he admitted that the record which has been exhibited has not been prepared by him. He denied that the record has been prepared by Federal Mogul as per their own. He denied that the petitioners were working under Federal Mogul but admitted that the work is being taken from the workers by Federal Mogul.

17. RW-4 Shri Balwinder Singh, Manager HR with respondent No. 2 tendered in evidence his affidavit Ex. RW-4/A wherein he reiterated almost all the averments as stated in the reply filed by respondent No. 2. He also tendered in evidence the copies of authority letter dated 16.5.2014 and Board Resolution dated 28.11.2013 mark X and Y, the copy of license issued to Asla Security Services dated 21.10.1991 mark Z, the copy of registration certificate along-with the name and address of the contractor mark Z-1 (14 pages), the copy of agreements RW-4/B and Ex. RW-4/C, the copy of letter dated 5.10.2007 Ex. RW-4/D, the copy of contract of security services dated 5.10.2007, mark Z-2, the copy of termination letter of contract dated 7.9.2009 Ex. RW-4/E and letter dated 9.9.2009 Ex. RW-4/F. In cross-examination on behalf of respondent No.1, he admitted that no contract was signed with Asla Security Services after 31.12.2008. He further admitted that the company enters into written agreement with the contractor for keeping contract labour. He denied that the contract with the Asla Security Services had ended on 31.12.2008. He further denied that termination letter Ex. RW-4/E was never handed-over to Asla Security Services and that the same was issued by the company in order to escape its liability. He also denied that entire record of the deceased used to remain in the company. When cross-examined on behalf of petitioners he denied that the petitioner (since deceased) was engaged as safai karamchari by the Gabriel India Company in the year 1984 and that he had worked till 7.9.2009 under the company. He further denied that the petitioner (now deceased) used to do the work under the directions of the company and that no person from Asla Security Services used to sit in the company premises. He admitted that no contract was signed in writing with Asla Security Services after 31.12.2008 for engaging the petitioner (now deceased). He denied that since the petitioner (now deceased) was the worker of the company therefore he continued with the company after the expiry of the agreement. He further denied that the company used to sanction the leave of the petitioner (now deceased). He admitted that the work which was used to be performed by the petitioner (now deceased) is still available with the company. He denied that all the material for cleaning the factory used to be purchased by the company and that the services of the petitioner (now deceased) were terminated by the company on 8.9.2009. He admitted that the company had not issued any notice and paid any compensation to the petitioner (now deceased). He admitted that Ex. RW-4/E was neither sent through registered letter nor signatures of Mr. A.S Lali were obtained regarding its receipt. He further admitted that prior to 31.12.2008 all the works to be done by the company with the contractor were in writing and that the petitioner (now deceased) was the member of Gabriel employees union Parwanoo. He also admitted that demand notice Ex. PW-1/C was given to the company. He denied that in the settlement the company used to be a party and the company used to implement the settlement. He further denied that the company has wrongly shown the petitioner (now deceased) as contractor worker.

18. RW-6 Shri Rajeev Kumar, Social Security Officer, ESIC Parwanoo has stated that as per summoned record Asla Security Services had deposited ESI contribution in respect of Balwant Rai, Nattu Ram, Munna Lal and Nirmala Devi from 1.10.2006 to 31.3.2007 and the record brought by him is Ex. RW-6/A (58 leaves). When cross-examined on behalf of respondent No.1 he expressed his ignorance that who had deposited the ESI contribution with ESI Corporation and as to whether any enquiry has been conducted regarding non-deposit of the ESI contribution after Sept., 2008. In cross-examination, on behalf of the petitioners he denied that any person can deposit the ESI contribution with respect to the ESI code number of Asla Security. He admitted that they do not enquire about the person who deposits the contribution by way of challan. He admitted that after March, 2007, no contribution was deposited by the Asla Security of above said workers. He further admitted that is mandatory for every employer to deposit the ESI contribution in the corporation with respect to the workers on their rolls.

19. RW-7 Shri Agya Ram Sharma has stated that he was working as security guard in M/s Asla Security Services *w.e.f.* the year 2003 till 2007 and thereafter as security supervisor till the year, 2008 and he had been authorized to give statement on behalf of Asla Security Services *vide* authority letter Ex. RW-7/A. He had not brought the summoned record as the same was deposited by him with Mr. Balwinder Singh, Manager (HR) of Federal Mogul Bearing India Ltd. on 1.8.2008. In cross-examination on behalf of petitioner he admitted that the petitioner (now deceased) was working as sweeper in the factory of respondent No. 2 prior to his engagement. He further admitted that the petitioner (now deceased) was under the control and supervision of respondent No. 2 and all the registers and adult workers register were in the custody of respondent no.2 and the attendance of the petitioner (now deceased) was used to be marked by him in the office. The respondent No. 2 company used to pay all the cheques in the name of Asla Security Services for payment of wages and the same were disbursed by Mr. A.S. Lali of Asla Security Services in the presence of Mr. G.P. Kala, Assistant Manager, HR of respondent No.2. He admitted that the petitioner (now deceased) was working in the company even after 1.8.2008.

20. After the closer scrutiny of the record of the case, it has become clear that the deceased Shri Nathu Ram was working as safai karamchari in the premises of the respondent No.2 company and his services were terminated *w.e.f.* 8.9.2009. It has also become clear from the record that the deceased Nathu Ram had died during the pendency of the reference on 10.11.2011 and the present claim petition has been filed by his Legal Heirs *i.e* petitioner No.1 to petitioner No.5. It is not disputed that the respondent No.2 company had a certificate of registration from the prescribed authority and the respondent No.1 had the license issued by the competent authority to deploy the contract labour as per the provisions of sections 7 & 12 of the Contract labour (Regulation and Abolition Act). It is also clear that *vide* agreement dated 25.3.1991 Ex. RW-4/B, M/s Vikram Services Parwanoo had entered into an agreement with the respondent No.1 M/s Asla Security Services *vide* which the respondent no.1 undertook to provide contract labour for security, housekeeping service etc. It has also become clear that *vide* agreement dated 5.4.1991, Ex. RW-4/C, the respondent No.1 undertook to provide the contract labour to Gabriel India Ltd., for security, housekeeping services, courier services etc., from time to time. RW-1 admitted in cross-examination that the agreements Ex. RW-4/B and Ex. RW-4/C, bear the signatures of his father who had died in a road accident. It is also not disputed that Gabriel India Ltd., (engine bearing division) was demerged from Gabriel India Ltd., into a separate company *i.e.* M/s Anand Engine Components in March, 2007. *Vide* letter dated 5.10.2007 Mark Z-2, M/s Anand Engine Components Ltd., had offered the contract to respondent No.1 for providing security services with the stipulation that the contract would be valid upto 31.12.2008 and it has further been stipulated therein that the agreement shall automatically expire unless and until further extended on mutually agreed terms and conditions. In March, 2008 M/s Federal Mogul Components took controlling interest in Anand Engine Components and renamed as Federal

Mogul Bearings India Ltd. RW-4 Shri Balwinder Singh, Manager HR stated in his affidavit Ex. RW-4/A that the deceased Nathu Ram was never an employee of respondent No.2 and only respondent No.1 was maintaining attendance and leave registers, over time register and was complying with all the labour laws, legislation and filling all the returns under the labour laws including the payment of ESI and EPF. He further deposed that the entire supervision and control over the contract labour was of respondent No.1 and its supervisors. RW-1 admitted in cross-examination that his father had entered into an agreement with Anand Engine Components and Gabriel India Ltd., to provide contractual labour for security, housekeeping etc., and the said contract came to an end in the year, 2008. He also admitted that the respondent No.1 was paying wages, maintaining the entire record under the labour laws, making payments of ESI, EPF to the contractual employees deputed with Gabriel and Anand Engine Ltd. Thus, the evidence and material on record particularly the admission of RW-1 indicates that the respondent No.1 had a complete control over the deceased Nathu Ram till 31.12.2008 as it used to disburse the salaries to the workers, maintain the entire records under the labour laws and make the contribution towards ESI and EPF of the contractual workers deputed with respondent no.2. Hence, it can safely be held that the deceased Nathu Ram was the employee of respondent no.1 contractor who deployed him with respondent No.2 company till 31.12.2008 when the contract between the respondent No.2 company and respondent No.1 came to an end.

21. From the perusal of material on record it has become clear that the services of the deceased Nathu Ram were terminated *w.e.f.* 8.9.2009 whereas the contract between respondent No.1 and respondent No.2 had expired on 31.12.2008. Now, the question which arises for consideration before this Court, as to whether the deceased Nathu Ram was the employee of respondent No. 1 or the employee of respondent No. 2 after the termination of contract *i.e* 31.12.2008. RW-1 stated in his evidence by way of affidavit that the contract between respondent No.1 and respondent No.2 expired on 31.12.2008 and thereafter it was not renewed further and the services of the deceased Nathu Ram were hired by respondent No.2 after the termination of the contract on 31.12.2008 and respondent No.1 had never terminated the services of the deceased Nathu Ram *w.e.f.* 8.9.2009. Though, the case of the respondent No. 2 is that after 31.12.2008 the services of the deceased Nathu Ram remained continued as per common understanding with the contractor, however, to substantiate its case no cogent and satisfactory evidence has been led by the respondent No.2. RW-4 admitted in cross-examination that no contract was signed in writing with Asla security Services after 31.12.2008 but the services of the deceased Nathu Ram were continued as per common oral understanding with the contractor. However, his statement to this effect is not worthy of credence as no company would have a common understanding with the contractor in the absence of anything in writing with respect to the continuation of the services of the employees/workers. The case of respondent No.2 is that *vide* letter dated 7.9.2009 Ex. RW-3/E it was communicated to the respondent No.1 that as the agreement for providing contract labour has not been extended as such respondent No.1 need not to deploy labour to respondent No. 2 *w.e.f.* 8.9.2009. However, admittedly this letter has neither been sent through registered post nor signatures of the contractor were obtained acknowledging the receipt of the same as such no benefit can be derived by the respondent No. 2 from the aforesaid letter. Moreover, no plausible explanation has been given by the respondent No.2 as to how the services of the deceased Nathu Ram were being continued after 31.12.2008 despite the fact that the contract with respondent No.1 stood expired on 31.12.2008. It has been specifically stipulated in the letter dated 5.10.2007 Mark Z-2 that the contract would be valid upto 31.12.2008 and it shall automatically expire unless and until further extended on mutually agreed terms and conditions. It is the admitted case of the respondent No.2 that no contract was signed after 31.12.2008. The learned counsel for the respondent No.2 vehemently argued that even after 31.12.2008, the respondent No.1 was paying wages to the deceased petitioner and also was making the contribution towards ESI and EPF account of the deceased Nathu Ram and in this respect he placed reliance upon the bills allegedly raised by Asla Security Services along-with

the challans of PF, ESI Ex. RW-3/A to RW-3/P which were produced by RW-3, the Finance Executive of respondent No.2. The bills Ex. RW-3/A to Ex. RW-3/L pertain to the period from May, 2008 to December, 2008 whereas the bill Ex. RW-3/M pertains to March, 2009, Ex. RW-3/N pertains to June, 2009, Ex. RW-3/O pertains to July, 2009 and Ex. RW-3/P pertains to August, 2009. However, these bills have not been proved in accordance with law as admittedly these bills have not been prepared by RW-3 and he also admitted in cross-examination that he was not aware as to who had signed and submitted the bills Ex. RW-3/A to Ex. RW-3/P. Moreover, the originals of these bills have not been produced in the Court. Therefore, no credence can be attached to these bills and no benefit can be derived by respondent No. 2 from the aforesaid bills. RW-2/1 Shri Rishabh, from the office of PF Chandigarh had produced the EPF record of the workers *w.e.f.* April, 2009 to 31.3.2010 and the same is Exhibited as Ex. RW-2/1/B. However, in cross-examination he admitted that he was not aware as to who had deposited the amount of EPF in their office. Therefore, from the entire statement of RW-3, it cannot be said that after 31.12.2008, the amount of EPF pertaining to the deceased Nathu Ram was being deposited by respondent No.1. RW-6 an official from ESIC Parwanoo had deposed that M/s Asla Security Services had deposited the ESI contribution in respect of deceased Nathu Ram *w.e.f.* 1.10.2006 to 31.7.2007 as per record Ex. RW-6/A and he further deposed that the rest of record is not available. He also admitted in cross-examination that after March 2007 no contribution was deposited by the Asla Security Services with respect to the petitioner (now deceased). Therefore, from his statement, it is clear that amount of ESI pertaining to the deceased Nathu Ram had not been deposited by respondent No.1 after 31.12.2008. There is no other evidence on record to suggest that the salary/wages to the deceased Nathu Ram were being paid by the respondent No.1 after 31.12.2008. Similarly, there is no satisfactory evidence on record to suggest that the respondent No.1 was making the contribution towards ESI and EPF of the deceased Nathu Ram after 31.12.2008. Therefore, taking into consideration the aforesaid facts and various attending circumstances, it is clear that the respondent No.1 had no role to play after 31.12.2008 so far as the deceased Nathu Ram is concerned and the deceased Nathu Ram had been working continuously with respondent No.2 in its premises after 31.12.2008 till the time of his termination *i.e* 8.9.2009 and as such the deceased Nathu Ram will have to be treated as the employee of respondent No. 2 company after 31.12.2008.

22. It has been proved on record that the deceased Nathu Ram had been in continuous service with respondent No.2 after 31.12.2008. It is not disputed that the deceased had completed 240 days in twelve calendar months preceding his termination. It has also become clear that neither any chargesheet was issued to the deceased Nathu Ram nor any enquiry was conducted against him prior to his termination. It is also an admitted fact that before terminating his services neither any notice had been issued to the deceased Nathu Ram nor he was paid any compensation by respondent No.2. Therefore, before terminating the services of the deceased Nathu Ram, it was incumbent upon the respondent No.2 to have complied with the provisions of Section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent No.2 has failed to comply with the provisions of Section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd.,** Vs. **Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

> **"34. ……The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of**

Section 25F clause (c), the appellant- Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."

23. In the present case also as observed aforesaid, the respondent No.2 has failed to comply with the provisions of Section 25-F of the Act before terminating the services of deceased Nathu Ram. Hence, In view of the law laid down by the Hon'ble Supreme Court (supra) and my foregoing observations, I have no hesitation in holding that the termination of the services of the deceased Nathu Ram *w.e.f.* 8.9.2009 by the respondent No.2 without holding enquiry and without serving chargesheet and that too without complying with the provisions of Section 25-F of the Act, is illegal and unjustified. Consequently, this issue is decided in favour of the petitioners and against respondent No.2.

Issue No.2:

24. Since, I have held under issues No.1 above that the termination of services of Nathu Ram (deceased) by the respondent No.2 *w.e.f.* 8.9.2009 without following the provisions of the Act is illegal and unjustified, hence, it has to be seen as to what relief of service benefits the LR's of deceased Nathu Ram are entitled from respondent No.2. It is by now well settled that if the termination of employee is found to be illegal, the relief by way of reinstatement with back-wages is not automatic. The Hon'ble Supreme Court in **Santosh Kumar Seal and others reported in 2010 LLR 677: 2010 III CLR 17 SC,** has held that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that mandatory compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

25. **In Jagbir Singh Vs. Haryana State Agricultural Marketing Board (2009) 15 SCC 327, t he H on' ble Supreme Court** has held that :

"It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of re-instatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

26. In the present case, even though the termination of the deceased Nathu Ram is held to be illegal, no order of his reinstatement can be passed as he had died during the pendency of the reference. Moreover, it has been stated at bar by the learned counsel for the respondent No. 2 that now the work of cleaning and sweeping of the unit has been given on outsource basis. Therefore, taking into account all the facts and circumstances of the case, the ends of justice would be met, if the lump sum compensation is awarded to the LR's of deceased Nathu Ram. Therefore, in my view the petitioners are entitled to receive a suitable, appropriate, just and equitable compensation from the respondent No. 2. Since, the services of the deceased Nathu Ram have been terminated illegally by the respondent no.2 company, therefore, in such a situation, it would be quite reasonable and justified if lump sum compensation of ₹ 3,00,000/- (₹ Three Lakhs only) is awarded to the LR's of the deceased Nathu Ram *i.e.* the present

petitioners. Consequently, this issue is decided in favour of the petitioners and against the respondent No. 2.

Issue No.3 & 4.

27. In support of these issues, no evidence has been led by the respondents. However, the petitioners have filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, both these issues are decided in favour of the petitioners and against the respondents.

Relief :

As a sequel to my findings on the aforesaid issues, the claim of the petitioners is partly allowed and as such the respondent No.2 company is directed to pay ₹ 3,00,000/- (₹ Three Lakhs only) as lump-sum compensation to the petitioners within a period of three months from today failing which the same shall carry interest @ 9% per annum from the date of award till its realization. The aforesaid amount of compensation shall be apportioned amongst the petitioners in the ratio of 40% to petitioner No.1 *i.e.* the widow of deceased and 15% each to petitioners No. 2 to 5. The amount of compensation payable to the minor petitioner No. 5 shall be invested by way of Fixed Deposit in some nationalized bank till he attains the age of majority. The reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 30th Day of August, 2017.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum- *Labour Court, Shimla.*

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Ref. No. 112 of 2010

Instituted on 27-10-2010

Decided on 30-8-2017

Balwant Rai s/o Shri Darham Dev, House No. 691, Shanti Nagar, Kalka, District Panchkula Haryana. . .*Petitioner.*

VERSUS

1. M/s Asla Security Services, SCO No. 88, Sector-35C Chandigarh UT through, its Proprietor Shri Inder Jeet Singh Lally.

2. M/s Federal Mogul Bearing India Ltd., Sector-2, Parwanoo, District Solan, H.P. through its General Manager . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.K. Khidtta, Advocate

For respondent No.1 : Ms. Monika Singh, Advocate

For respondent No.2 : Shri Rahul Manajan, Advocate

AWARD

The following reference has been sent by the appropriate government for adjudication:

"**Whether the verbal termination of the services of Shri Balwant Rai s/o Shri Barham Dev workman by (1) Shri A.S. Lali, s/o Shri Lal Singh Lali, M/s Asia Security Services SCO No. 88, Sector-35-C, Chandigarh UT (Contractor) and (2) The General Manager, Federal Mogul Bearings India Ltd., Plot No. 5, Sector-2, Parwanoo, District Solan, H.P. (Principal Employer)** w.e.f. **8-9-2009 without serving chargesheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the above employer?"**

2. Briefly, the case of the petitioner is that he was engaged as Safai Karamchari by the Gabriel India Ltd., company presently known as M/s Federal Mogul Bearings India Ltd., (hereinafter referred to as respondent No.2) in the year, 1981 and worked as such till 8-9-2009 but later on he was shown to be engaged through respondent No.1 by the respondent no.2 just to frustrate his rightful claim and to save themselves from the liability of the workers. That the petitioner being the member of Gabriel Employees Union, INTUC, Parwanoo, District Solan, H.P. along-with other workers used to settle their claim including increase in the salary of the workers by way of long term settlement with the respondents and after the expiry of settlement, new settlement used to be executed between the parties and the salary and other benefits used to be increased/given to the workers as per the price rise and keeping in view the other relevant factors by the respondents and even the workers also used to perform their duties as agreed in the settlement. It is further stated that last long term settlement between the workers union and respondents was executed for the period from 1-1-2003 to 31-12-2007 and after the expiry of the settlement, the workers through their union approached the respondents for the settlement of their demands but no settlement was arrived at between the parties and ultimately the workers were forced to file the demand notice. It is also stated that during the pendency of the demand notice, the services of the petitioner were terminated orally by the respondents *w.e.f.* 8-9-2009 without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) as no notice or pay in lieu of notice and retrenchment compensation has been paid by the respondents to the petitioner and even his services were not re-engaged despite having been requested for his reinstatement. That the work and conduct of the petitioner always remained up to the satisfaction of the officials of the respondents and he had completed 240 days in each calendar year and his services had been terminated without assigning any reason and after his termination, the respondents have engaged new persons, in violation of the provisions of section 25-H of the Act, who are still working with them and even the work which the petitioner was performing is still available with the respondent No.2. That while terminating the services of the petitioner, the respondent company has violated the provisions of section 25-F, 25-G, 25-H and 25-N of the Act and that the petitioner is a workman as defined in the Act as he used to work manually. Against this back-drop a prayer has been made that his termination *w.e.f.* 8-9-2009 be set aside and quashed and he be reinstated in service on the same post with all consequential service benefits including back-wages etc.

3. By filing separate reply, the respondent No.1 had contested the claim of the petitioner wherein preliminary objections had been taken *qua* maintainability, estoppel, concealment of material facts, no cause of action and that there is no employer and employee relationship between the petitioner and respondent No.1. On merits, it has been asserted that the petitioner was the employee of respondent No.2 and no settlement has ever been entered between the petitioner and respondent No.1 at any point of time. It is denied that the services of the petitioner have been orally terminated *w.e.f.* 8-9-2009 by the respondent No. 1. That the respondent No. 2 without giving the two month's notice terminated the contract by violating the terms of the contract that the respondent No. 2 is liable to pay the entire benefits, if any, to the petitioner. It is asserted that the petitioner never visited the office of respondent No.1 and being the principle employer, the respondent No.2 terminated the services of petitioner. The respondent No.1 prayed for the dismissal of the claim petition.

4. The respondent No.2 also filed separate reply wherein preliminary objections had been taken *qua* maintainability, that there exists no employee and employer relationship between the replying respondent and petitioner and that the contract for deployment of contract labour by the contractor with the respondent No.2 was not renewed on its expiry and the contractor was asked not to deploy the contract labour *w.e.f.* 8-9-2009. It is submitted that the contractor had entered into an agreement for providing contract labour for security, housekeeping service, courier service, peon and pantry service in terms of agreements dated 5-4-1991 and 25-12-2003 entered between contractor and Gabriel India Ltd., and Gabriel India Ltd. (Engine Bearing Division) was demerged from Gabriel India Ltd., into a separate company *i.e.* M/s Anand Engine Component Ltd. in March 2007. That M/s Anand Engine Component Ltd. and contractor entered into a fresh agreement dated 5-10-2007 as per which the contractor was to provide the contract labour up to 31-12-2008 and contract would automatically stand expired unless and until further extended on mutually agreed terms and conditions. That in Feb., 2008, Federal Mogul took controlling interest in Anand Engine Component Ltd. and renamed as Federal Mogul Bearing India Ltd., *vide* letter dated 7-9-2009 which was also communicated to the contractor that as the agreement for providing contract labour was not extended in terms of agreements dated 5-4-1991, 25-12-2003 and 5-10-2007, the contractor need not deploy its labour with the respondent No.1 *w.e.f.* 8-9-2009 as the contract was not extended with the contractor. On merits, it has been asserted that the petitioner was the employee of contractor and *vide* agreement dated 25-3-1991, Asla Security Services undertook to provide contract labour for security, housekeeping service, courier service, peon and pantry service to Gabriel India Ltd., and also undertook to pay their ESI and EPF and the wages were being paid to the petitioner by the contractor and even muster-roll, attendance register was being maintained by the contractor. It is further asserted that at no point of time any settlement was signed by Federal Mogul Bearing India Ltd., Gabriel India Ltd. and Anand components Ltd., with contractor, contract employees and Gabriel Employees Union, INTUC as the employees of the contractor were not the employees of respondent No.2. As the agreements dated 5-4-1991, 25-12-2003 and 5-10-2007 were upto 31-12-2008 and were not extended mutually thus automatically came to an end and the replying respondent asked the contractor not to deploy the labour *w.e.f.* 8-9-2009 and as such the services of the petitioner were never terminated by the replying respondent and there has been no violation of provisions of the Act as it is the sole responsibility of the contractor to make payment of compensation/salary to the petitioner. Since, the petitioner was not the employee of respondent No.2, hence, industrial dispute has wrongly been raised against the replying respondent and there is no violation of section 25-F, G, H and N of the Act as the services of the petitioner had been engaged through contractor and the replying respondent is not liable to pay any compensation to the petitioner. The respondent No. 2 also prayed for the dismissal of the claim petition.

5. By filing separate rejoinders to the replies filed by the respondents, the petitioner reaffirmed his allegations by denying those of the respondents.

6. Pleadings of the parties gave rise to the following issues which were struck on 27-9-2012.

1. Whether the services of the petitioner were terminated without holding enquiry and without serving any chargesheet? . .*OPP.*

2. Whether the services of the petitioner were terminated in violation of the provisions of the Industrial Disputes Act, 1947? . .*OPP.*

3. Whether this petition is not maintainable? . .*OPR.*

4. Whether the claim petition is bad for non-joinder of necessary parties? . .*OPR.*

5. Whether the petitioner has concealed material facts? If so, its effect? . .*OPR.*

6. Relief.

7. Besides having heard the leaned counsel for the parties, I have also gone through the written arguments submitted by the petitioner and the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under :—

Issue No.1	Yes
Issue No.2	Yes
Issue No.3	No
Issue No.4	Not pressed
Issue No.5	Not pressed
Relief	Reference answered in favour of the petitioner and against respondent No.2 per operative part of award.

Reasons for findings

Issues No. 1&2

9. Being interlinked and correlated, both these issues are being taken up together for discussion and decision.

10. Learned Counsel for the petitioner contended that the petitioner is the employee of respondent No. 2 as he had been engaged by respondent No. 2 and even at the time of termination of the services of the petitioner there was no contract between respondent No.1 and respondent No. 2. He further contended that the petitioner had completed more than 240 days in each calendar year, hence, his services could be terminated without complying with the provisions of sections 25-F of the Act and even after the termination of the services of the petitioner, the respondent No.2 had engaged fresh hands and retained his juniors in violation of the provisions of sections 25-G and H of the Act. He also contended that at the time of termination of the services of the petitioner, demand notice was pending before the Conciliation Officer and the services of the petitioner had been terminated in violation of the provisions of section 33 of the Act.

11. On the other hand, Ld. counsel for the respondent No.1 contended that the petitioner was not the employee of respondent No.1 as there was no contract/agreement after 31-12-2008 between respondent No.1 and respondent No.2 and as such the services of petitioner were never terminated by respondent No.1.

12. Learned counsel for respondent No.2 contented that for the smooth functioning of the company, the services of the petitioner had been engaged through contractor as per agreements executed between respondent No.1 and 2 and his wages, EPF, ESI, and other benefits were being paid by the contractor. That the respondent No.2 had no concern with the engagement and disengagement of the petitioner. He further contended that since the agreement was not renewed between respondent No.1 and 2, for providing the contract labour, hence, the services of the petitioner stood automatically terminated. He also contended that since the petitioner had not been engaged by the respondent No.2 company, who had worked with the company through contractor, hence, there is no need to comply with the provisions of the Act by respondent No. 2.

13. To prove his case, the petitioner examined two PWs including himself. The petitioner stepped into the witness box as PW-1 to depose that he was engaged as safai karamchari by the Gabriel India Ltd. in the year, 1981 and worked as such till 8-9-2009 continuously. That Gabriel India Ltd. is now known as Federal Mogul Company and he was working under respondent No.2 company and he was the member of workers union known as Gabriel Employees Union. From the date of his engagement, settlements used to be arrived at as per which their salaries and allowances used to be increased. The copies of settlements are Ex.PW-1/A to Ex. PW-1/C. Thereafter, they raised demand notice Ex.PW-1/D to the company through union which is still pending before the Conciliation Officer. That his services were terminated without issuance of any notice and conducting any enquiry. The work which he was performing is still available with the company and even the company had engaged fresh persons after his termination. He is unemployed from the date of his termination. When cross-examined on behalf of respondent No.1, he admitted that his services were terminated in the year, 2009 by the company and that he had nothing to do with the respondent No.1. He further admitted that the union had entered into agreement with the company. In cross-examination on behalf of respondent No.2, he expressed his ignorance that initially his services had been engaged by the owner of M/s Vikram Services and was deputed with Gabriel India. He admitted that he had no appointment letter issued by the Gabriel India Ltd. He expressed his ignorance that after the expiry of contract his services had been terminated by respondent No.1. He denied that he was not the employee of Federal Mogul Bearings India.

14. PW-2 Shri Dwarka Nath, has stated that he was the President of the employees union which is duly registered and the petitioner is the active member of the union being safai karamchari and initially he had been engaged by the company M/s Gabriel India Ltd., and thereafter the services of the petitioner were being shown through bogus contractor. He further stated that the wages of the petitioner were being paid by the company and the wages of the workers used to be enhanced as per settlement arrived at between the union and the management and on the expiry of the date of settlement Ex. PW-1/B, they filed the demand notice Ex. PW-1/C to the company, the copy of which was also sent to the Labour Inspector, Parwanoo and Labour-*cum*-Conciliation Officer, Solan upon which the company was called by the Conciliation Officer but despite that the company failed to arrive at settlement which is still pending and the settlement was to be effected from December 2007. The demands as per Ex. PW-1/C are genuine in view of the increase in the price index and the termination of the services of the petitioner is totally illegal and against the provisions of the Act. In cross-examination on behalf of respondent No.1, he admitted that when respondent No.2 took over Gabriel India Ltd., Parwanoo all the employees were also taken by it (respondent No.2) and that since then the

respondent No.2 is making the payment of wages to the employees. He admitted that when the petitioner was disengaged no intimation was given to the union and that the demands as per Ex. PW-1/C are honored/fulfilled by respondent No.2. When cross-examined on behalf of respondent No.2, he denied that he is not the employee of the respondent No.2. He admitted that his services had been terminated by the company after obtaining permission of this Court. He denied that initially the petitioner was the employee of M/s Vikram Services Parwanoo, Prop. Shri B.M. Malhotra (contractor). He denied that the petitioner was the employee of M/s Asla Security (respondent No.1) since April 1991 and that PF/ESI contribution/wages were also being paid by respondent no.1. He further denied that the services of the petitioner were not deputed with company in terms of agreements dated 5-4-1991, 25-12-2003 and 5-10-2007 and that the agreement to provide contract labour by contractor was terminated *vide* letter dated 7-9-2009. He also denied that the petitioner was not the employee of respondent No.2.

15. On the contrary, the respondent No.1 examined one witness. RW-1 Shri Inderjit Singh, Prop. of respondent No.1 tendered his affidavit Ex. RA-1 in evidence wherein he reiterated almost all the averments as made in the reply. In cross-examination, on behalf of respondent No. 2 he admitted that he started managing the affairs of Asla Security Services after May 2011. He denied that before May 2011 he was not aware of the contracts between Asla Security and its clients. He admitted that his father as Prop. of Asla Security Services had entered into an agreement with Anand Engine Components to provide contract labour for security, house-keeping etc. and his father being prop. of Asla Security Services also entered into an agreement with Gaberial India Ltd., to provide contractual labour and he also used to go to disburse the salaries in various companies and their contract with Gabriel India came to an end in the year, 2008. He admitted that Asla Security Pvt. Ltd. was paying wages, maintaining the entire records under labour laws, making payments of ESI, EPF to the contractual employees deputed with Gabriel and Anand Engine Ltd. He expressed his ignorance that agreement Ex. PW-1/B had been entered between his father and the workers deployed with Gabriel India Ltd. and Gabriel Employees Union. He expressed his ignorance that upto 7-9-2009, the prop. of Asia Security Services had paid salary to the petitioner and also other contributions such as ESI, EPF. He also expressed his ignorance that on 7-9-2009, respondent No.2 had told Asla Security Services not to send the petitioner/contract labour *w.e.f.* 8-9-2009. He denied that the petitioner and other contract workers are the employee of Asla Security Services and that entire payment of gratuity and compensation was to be paid by the Asla Security Services. When cross-examined on behalf of petitioner, he admitted that the petitioner was not their employee and that he was the employee of respondent No.2 and they are liable to pay all salaries and all other benefits. He further admitted that Asla Security Services had no contract with FMBL to provide them contractual labour including Safai Karamchari and that the duty from petitioner was taken by respondent No.2. He also admitted that entire documents, as aforesaid, were not executed in his presence nor he was party to the same.

16. Respondent No.2 examined six witnesses. RW-2/1 Shri Rishabh, from PF office brought the summoned record *w.e.f.* April 2009 till 2010. He stated that other record had been destroyed *vide* certificate Ex. RW-2/1/A. He also produced Form No.6 Ex.RW-2/1/B. In cross-examination on behalf of petitioner he could not state as to who had deposited EPF as per Ex. RW-2/1-B. He denied that in the name of Asla Security anyone can deposit the amount as shown in Ex. RW-2/1/B but explained that the employer code is of Asla Security. When cross-examined on behalf of respondent No.2, he denied that as per Ex. RW-2/1/B, it cannot be said that who had deposited the money.

17. RW-3 Shri Rohit Garg, Finance Executive with respondent No. 2 has stated that the copies of bills raised by Asla Security alongwith the challans of PF, ESI, list of workers working under Asla Security and the payments made by cheque to Asla Security by Federal Mogul

Bearings Ltd., are Ex. RW-3/A to Ex. RW-3/P and Ex. RW-3/Q is the summary of the entire payment made to Asla Security Services in respect of the bills raised. In cross-examination on behalf of respondent No.1, he expressed his ignorance that who had signed the bills Ex. RW- 3/A to Ex. RW-3/P. When cross-examined on behalf of petitioner he admitted that the record which has been exhibited has not been prepared by him. He denied that the record has been prepared by Federal Mogul as per their own. He denied that the petitioners were working under Federal Mogul but admitted that the work is being taken from the workers by Federal Mogul.

18. RW-4 Shri Balwinder Singh, Manager HR with respondent No.2 tendered in evidence his affidavit Ex. RW-4/A wherein he reiterated almost all the averments as stated in the reply filed by respondent No.2. He also tendered in evidence the copies of authority letter dated 16-5-2014 and Board Resolution dated 28-11-2013 mark X and Y, the copy of license issued to Asla Security Services dated 21-10-1991 mark Z, the copy of registration certificate along-with the name and address of the contractor mark Z-1 (14 pages), the copy of agreements RW-4/B and Ex. RW-4/C, the copy of letter dated 5-10-2007 Ex. RW-4/D, the copy of contract of security services dated 5-10-2007, mark Z-2, the copy of termination letter of contract dated 7-9-2009 Ex. RW-4/E and letter dated 9-9-2009 Ex. RW-4/F. In cross-examination on behalf of respondent No.1, he admitted that no contract was signed with Asla Security Services after 31-12-2008. He further admitted that the company enters into written agreement with the contractor for keeping contract labour. He denied that the contract with the Asla Security Services had ended on 31-12-2008. He further denied that termination letter Ex. RW-4/E was never handed-over to Asla Security Services and that the same was issued by the company in order to escape its liability. He also denied that entire record of the petitioner used to remain in the company. When cross-examined on behalf of petitioner he denied that the petitioner was engaged as Safai Karamchari by the Gabriel India Company in the year 1981 and that he had worked till 7-9-2009 under the company. He further denied that the petitioner used to do the work under the directions of the company and that no person from Asla Security Services used to sit in the company premises. He admitted that no contract was signed in writing with Asla Security Services after 31-12-2008 for engaging the petitioner. He denied that since the petitioner was the worker of the company therefore he continued with the company after the expiry of the agreement. He further denied that the company used to sanction the leave of the petitioner. He admitted that the work which was used to be performed by the petitioner is still available with the company. He denied that all the material for cleaning the factory used to be purchased by the company and that the services of the petitioner were terminated by the company on 8-9-2009. He admitted that the company had not issued any notice and paid any compensation to the petitioner. He admitted that Ex. RW-4/E was neither sent through registered letter nor signatures of Mr. A.S Lali were obtained regarding its receipt. He further admitted that prior to 31-12-2008 all the works to be done by the company with the contractor were in writing and that the petitioner was the member of Gabriel employees union Parwanoo. He also admitted that demand notice Ex. PW-1/C was given to the company. He denied that in the settlement the company used to be a party and the company used to implement the settlement. He further denied that the company has wrongly shown the petitioner as contractor worker.

19. RW-6 Shri Rajeev Kumar, Social Security Officer, ESIC Parwanoo has stated that as per summoned record Asla Security Services had deposited ESI contribution in respect of Balwant Rai, Nattu Ram, Munna Lal and Nirmala Devi from 1-10-2006 to 31-3-2007 and the record brought by him is Ex. RW-6/A (58 leaves). When cross-examined on behalf of respondent No.1 he expressed his ignorance that who had deposited the ESI contribution with ESI Corporation and as to whether any enquiry has been conducted regarding non-deposit of the ESI contribution after Sept., 2008. In cross-examination, on behalf of the petitioner he denied that any person can deposit the ESI contribution with respect to the ESI code number of Asla Security. He admitted that they do not enquire about the person who deposits the contribution by

way of challan. He admitted that after March 2007 no contribution was deposited by the Asia Security of above said workers. He further admitted that is mandatory for every employer to deposit the ESI contribution in the corporation with respect to the workers on their rolls.

20. RW-7 Shri Agya Ram Sharma has stated that he was working as security guard in M/s Asla Security Services *w.e.f.* the year 2003 till 2007 and thereafter as security supervisor till the year, 2008 and he had been authorized to give statement on behalf of Asla Security Services *vide* authority letter Ex. RW-7/A. He has not brought the summoned record as the same was deposited by him with Mr. Balwinder Singh, Manager (HR) of Federal Mogul Bearing India Ltd. on 1-8-2008. In cross-examination on behalf of petitioner he admitted that the petitioner was working as sweeper in the factory of respondent No.2 prior to his engagement. He further admitted that the petitioner was under the control and supervision of respondent No.2 and all the registers and adult workers register were in the custody of respondent No.2 and the attendance of the petitioner was used to be marked by him in the office. The respondent no.2 company used to pay all the cheques in the name of Asla Security Services for payment of wages and the same were disbursed by Mr. A.S. Lali of Asla Security Services in the presence of Mr. G. P. Kala, Assistant Manager, HR of respondent No. 2. He admitted that the petitioner was working in the company even after 1-8-2008.

21. After the closer scrutiny of the record of the case, it has become clear that the petitioner was working as safai karamchari in the premises of the respondent No. 2 company and his services were terminated *w.e.f.* 8-9-2009. It is also not disputed that the respondent No. 2 company had a certificate of registration from the prescribed authority and the respondent No.1 had the license issued by the competent authority to deploy the contract labour as per the provisions of sections 7 & 12 of the Contract labour (Regulation and Abolition Act). It is also clear that *vide* agreement dated 25-3-1991 Ex. RW-4/B, M/s Vikram Services Parwanoo had entered into an agreement with the respondent no.1 M/s Asla Security Services vide which the respondent No.1 undertook to provide contract labour for security, housekeeping service etc. It has also become clear that *vide* agreement dated 5-4-1991, Ex. RW-4/C, the respondent No.1 undertook to provide the contract labour to Gabriel India Ltd., for security, housekeeping services, courier services etc., from time to time. RW-1 admitted in cross-examination that the agreements Ex. RW-4/B and Ex. RW-4/C, bear the signatures of his father who had died in a road accident. It is also not disputed that Gabriel India Ltd. (engine bearing division) was demerged from Gabriel India Ltd., into a separate company *i.e.* M/s Anand Engine Components in March 2007. *Vide* letter dated 5-10-2007 Mark Z-2, M/s Anand Engine Components Ltd., had offered the contract to respondent No.1 for providing security services with the stipulation that the contract would be valid upto 31-12-2008 and it has further been stipulated therein that the agreement shall automatically expire unless and until further extended on mutually agreed terms and conditions. In March 2008 M/s Federal Mogul Components took controlling interest in Anand Engine Components and renamed as Federal Mogul Bearings India Ltd. RW-4 Shri Balwinder Singh, Manager HR stated in his affidavit Ex. RW-4/A that the petitioner was never an employee of respondent No.2 and only respondent No.1 was maintaining attendance and leave registers, over time register and was complying with all the labour laws, legislation and filling all the returns under the labour laws including the payment of ESI and EPF. He further deposed that the entire supervision and control over the contract labour was of respondent No.1 and its supervisors. RW-1 admitted in cross- examination that his father had entered into an agreement with Anand Engine Components and Gabriel India Ltd., to provide contractual labour for security, housekeeping etc., and the said contract came to an end in the year 2008. He also admitted that the respondent No.1 was paying wages, maintaining the entire record under the labour laws, making payments of ESI, EPF to the contractual employees deputed with Gabriel and Anand Engine Ltd. Thus, the evidence and material on record particularly the admission of RW-1 indicates that the respondent No.1 had a complete control over the petitioner till 31-12-2008 as it used to disburse

the salaries to the workers, maintain the entire records under the labour laws and make the contribution towards ESI and EPF of the contractual workers deputed with respondent No.2. Hence, it can safely be held that the petitioner was the employee of respondent No.1 contractor who deployed him with respondent No. 2 company till 31-12-2008 when the contract between the respondent No.2 company and respondent No.1 came to an end.

22. From the perusal of material on record it has become clear that the services of the petitioner were terminated *w.e.f.* 8-9-2009 whereas the contract between respondent No.1 and respondent No.2 had expired on 31-12-2008. Now, the question which arises for consideration before this Court, as to whether the petitioner was the employee of respondent No.1 or the employee of respondent No.2 after the termination of contract *i.e.* 31-12-2008. RW-1 stated in his evidence by way of affidavit that the contract between respondent No.1 and respondent No.2 expired on 31-12-2008 and thereafter it was not renewed further and the services of the petitioner were hired by respondent No.2 after the termination of the contract on 31-12-2008 and respondent No.1 had never terminated the services of the petitioner *w.e.f.* 8-9-2009. Though, the case of the respondent No.2 is that after 31-12-2008 the services of the petitioner remained continued as per common understanding with the contractor, however, to substantiate its case no cogent and satisfactory evidence has been led by the respondent no.2. RW-4 admitted in cross- examination that no contract was signed in writing with Asla security Services after 31-12-2008 but the services of the petitioner were continued as per common oral understanding with the contractor. However, his statement to this effect is not worthy of credence as no company would have a common understanding with the contractor in the absence of anything in writing with respect to the continuation of the services of the employees/workers. The case of respondent No.2 is that *vide* letter dated 7-9-2009 Ex. RW-3/E it was communicated to the respondent No.1 that as the agreement for providing contract labour has not been extended as such respondent No.1 need not to deploy labour to respondent No.2 *w.e.f.* 8-9-2009. However, admittedly this letter has neither been sent through registered post nor signatures of the contractor were obtained acknowledging the receipt of the same as such no benefit can be derived by the respondent No. 2 from the aforesaid letter. Moreover, no plausible explanation has been given by the respondent No. 2 as to how the services of the petitioner were being continued after 31-12-2008 despite the fact that the contract with respondent No.1 stood expired on 31-12-2008. It has been specifically stipulated in the letter dated 5-10-2007 Mark Z-2 that the contract would be valid upto 31-12-2008 and it shall automatically expire unless and until further extended on mutually agreed terms and conditions. It is the admitted case of the respondent No. 2 that no contract was signed after 31-12-2008. The learned counsel for the respondent No. 2 vehemently argued that even after 31-12-2008, the respondent No. 1 was paying wages to the petitioner and also was making the contribution towards ESI and EPF account of the petitioner and in this respect he placed reliance upon the bills allegedly raised by Asla Security Services alongwith the challans of PF, ESI Ex. RW-3/A to RW-3/P which were produced by RW-3, the Finance Executive of respondent No. 2. The bills Ex. RW-3/A to Ex. RW-3/L pertain to the period from May 2008 to December 2008 whereas the bill Ex. RW-3/M pertains to March 2009, Ex. RW-3/N pertains to June 2009, Ex. RW-3/O pertains to July 2009 and Ex. RW-3/P pertains to August 2009. However, these bills have not been proved in accordance with law as admittedly these bills have not been prepared by RW-3 and he also admitted in cross-examination that he was not aware as to who had signed and submitted the bills Ex. RW-3/A to Ex. RW-3/P. Moreover, the originals of these bills have not been produced in the Court. Therefore, no credence can be attached to these bills and no benefit can be derived by respondent No. 2 from the aforesaid bills. RW-2/1 Shri Rishabh, from the office of PF Chandigarh had produced the EPF record of the workers *w.e.f.* April 2009 to 31-3-2010 and the same is Exhibited as Ex. RW-2/1/B. However, in cross-examination he admitted that he was not aware as to who had deposited the amount of EPF in their office. Therefore, from the entire statement of RW-3, it cannot be said that after 31-12-2008, the amount of EPF pertaining to the petitioner was being deposited by respondent No.1. RW-6 an

official from ESIC Parwanoo had deposed that M/s Asla Security Services had deposited the ESI contribution in respect of petitioner *w.e.f.* 1-10-2006 to 31-7-2007 as per record Ex. RW-6/A and he further deposed that the rest of record is not available. He also admitted in cross-examination that after March 2007 no contribution was deposited by the Asla Security Services with respect to the petitioner. Therefore, from his statement, it is clear that amount of ESI pertaining to the petitioner had not been deposited by respondent No.1 after 31-12-2008. There is no other evidence on record to suggest that the salary/wages to the petitioner were being paid by the respondent No.1 after 31-12-2008. Similarly, there is no satisfactory evidence on record to suggest that the respondent No.1 was making the contribution towards ESI and EPF of the petitioner after 31-12-2008. Therefore, taking into consideration the aforesaid facts and various attending circumstances, it is clear that the respondent No.1 had no role to play after 31-12-2008 so far as the petitioner is concerned and the petitioner had been working continuously with respondent No.2 in its premises after 31-12-2008 till the time of his termination *i.e.* 8-9-2009 and as such the petitioner will have to be treated as the employee of respondent No. 2 company after 31-12-2008.

23. It has been proved on record that the petitioner had been in continuous service with respondent No. 2 after 31-12-2008. It is not disputed that the petitioner had completed 240 days in twelve calendar months preceding his termination. It has also become clear that neither any chargesheet was issued to the petitioner nor any enquiry was conducted against him prior to his termination. It is also an admitted fact that before terminating his services neither any notice had been issued to the petitioner nor \he was paid any compensation by respondent No.2. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent No. 2 to have complied with the provisions of section 25- F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent No. 2 has failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd.,** Vs. **Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

> **"34. ……The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant- Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."**

24. In the present case also as observed aforesaid, the respondent no.2 has failed to comply with the provisions of section 25-F of the Act before terminating his services. Hence, In view of the law laid down by the Hon'ble Supreme Court (*supra*) and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 8-9-2009 by the respondent No.2 without holding enquiry and without serving chargesheet and that too without complying with the provisions of section 25-F of the Act, is illegal and unjustified.

25. Therefore, in view of my foregoing discussion as it has been held that the services of the petitioner *w.e.f.* 8-9-2009 had been illegally terminated by respondent No. 2, hence, it has to be

seen as to what relief of service benefits the petitioner is entitled from respondent No. 2. It is by now well settled that if the termination of employee is found to be illegal, the relief by way of reinstatement with back-wages is not automatic. The Hon'ble Supreme Court in **Santosh Kumar Seal and others reported in 2010 LLR 677: 2010 III CLR 17 SC,** has held that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that mandatory compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

26. In Jagbir Singh *Vs.* Haryana State Agricultural Marketing Board (2009) 15 **SCC 327, the Hon'ble Supreme Court** has held that:

> "It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and maybe wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. **"**

27. In the present case, even though the termination of the petitioner is held to be illegal but his reinstatement would not be appropriate relief as it has been stated at bar by the learned counsel for the respondent No.2 that now the work of cleaning and sweeping of the unit has been given on outsource basis. Therefore, in such a situation it would not be appropriate to make the order for reinstatement of the petitioner in the present case. Hence, taking into account all the facts and circumstances of the case, the ends of justice would be met, if the lump-sum compensation is awarded to the petitioner. Therefore, in my view the petitioner is entitled to receive a suitable, appropriate, just and equitable compensation from the respondent No.2. Since, the services of the petitioner have been terminated illegally by the respondent No.2 company, therefore, in such a situation, it would be quite reasonable and justified if lump sum compensation of ₹ 3,00,000/- (₹ Three lakhs only) is awarded to the petitioner. Consequently, both these issue are decided in favour of the petitioner and against the respondent No. 2.

Issue No.3 :

28. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issues No. 4&5 :

29. During the course of arguments, these issues have not been pressed by the learned counsel for respondents. Hence, these issues are decided in favour of the petitioner and against the respondents.

Relief:

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is partly allowed and as such the respondent no.2 company is directed to pay ₹ 3,00,000/- (₹ Three lakhs only) as lump sum compensation to the petitioner within a period of three months from today

failing which the same shall carry interest @ 9% per annum from the date of award till its realization. The reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 30th Day of August, 2017.

(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal-cum- *Labour Court, Shimla.*

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref. No. 113 of 2010

Instituted on 27-10-2010

Decided on 30-8-2017

Muna Lal c/o Nirmala w/o Shri Chotta Lal House no. 1752, Balmiki Basti, Upper Mohalla, Kalka, District Panchkula Haryana. . .*Petitioner.*

VERSUS

1. M/s Asla Security Services, SCO No. 88, Sector-35C Chandigarh UT through, its Proprietor Shri Inder Jeet Singh Lally.

2. M/s Federal Mogul Bearing India Ltd., Sector-2, Parwanoo, District Solan, H.P. through its General Manager. . .*Respondents.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R. K. Khidtta, Advocate

For respondent No.1 : Ms. Monika Singh, Advocate

For respondent No.2 : Shri Rahul Manajan, Advocate

AWARD

The following reference has been sent by the appropriate government for adjudication:

"**Whether the verbal termination of the services of Shri Munna Lal s/o Shri Chhote Lal workman by (1) Shri A. S. Lali, s/o Shri Lal Singh Lali, M/s Asia Security Services SCO No. 88, Sector-35-C, Chandigarh UT (Contractor) and (2) The General Manager, Federal Mogul Bearings India Ltd., Plot No. 5, Sector-2, Parwanoo, District Solan, H.P. (Principal Employer)** w.e.f. **8-9-2009 without serving chargesheet, without holding enquiry and without complying with the provisions of**

the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that he was engaged as Safai Karamchari by the Gabriel India Ltd., company presently known as M/s Federal Mogul Bearings India Ltd., (hereinafter referred to as respondent no.2) in the year, 1982 and worked as such till 8-9-2009 but later on he was shown to be engaged through respondent No.1 by the respondent No. 2 just to frustrate his rightful claim and to save themselves from the liability of the workers. That the petitioner being the member of Gabriel Employees Union, INTUC, Parwanoo, District Solan, H.P. along-with other workers used to settle their claim including increase in the salary of the workers by way of long term settlement with the respondents and after the expiry of settlement, new settlement used to be executed between the parties and the salary and other benefits used to be increased/given to the workers as per the price rise and keeping in view the other relevant factors by the respondents and even the workers also used to perform their duties as agreed in the settlement. It is further stated that last long term settlement between the workers union and respondents was executed for the period from 1-1-2003 to 31-12-2007 and after the expiry of the settlement, the workers through their union approached the respondents for the settlement of their demands but no settlement was arrived at between the parties and ultimately the workers were forced to file the demand notice. It is also stated that during the pendency of the demand notice, the services of the petitioner were terminated orally by the respondents *w.e.f.* 8-9-2009 without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) as no notice or pay in lieu of notice and retrenchment compensation has been paid by the respondents to the petitioner and even his services were not re-engaged despite having been requested for his reinstatement. That the work and conduct of the petitioner always remained up to the satisfaction of the officials of the respondents and he had completed 240 days in each calendar year and his services had been terminated without assigning any reason and after his termination, the respondents have engaged new persons, in violation of the provisions of Section 25-H of the Act, who are still working with them and even the work which the petitioner was performing is still available with the respondent No.2. That while terminating the services of the petitioner, the respondent company has violated the provisions of Section 25-F, 25-G, 25-H and 25-N of the Act and that the petitioner is a workman as defined in the Act as he used to work manually. Against this back-drop a prayer has been made that his termination *w.e.f.* 8-9-2009 be set aside and quashed and he be reinstated in service on the same post with all consequential service benefits including back-wages.

3. By filing separate reply, the respondent No.1 had contested the claim of the petitioner wherein preliminary objections had been taken *qua* maintainability, estoppel, concealment of material facts, no cause of action and that there is no employer and employee relationship between the petitioner and respondent No.1. On merits, it has been asserted that the petitioner was the employee of respondent No.2 and no settlement has ever been entered between the petitioner and respondent No.1 at any point of time. It is denied that the services of the petitioner have been orally terminated *w.e.f.* 8-9-2009 by the respondent No.1. That the respondent No.2 without giving the two month's notice terminated the contract by violating the terms of the contract that the respondent No.2 is liable to pay the entire benefits, if any, to the petitioner. It is asserted that the petitioner never visited the office of respondent No. 1 and being the principle employer, the respondent No.2 terminated the services of petitioner. The respondent No.1 prayed for the dismissal of the claim petition.

4. The respondent No.2 also filed separate reply wherein preliminary objections had been taken *qua* maintainability, that there exists no employee and employer relationship between the replying respondent and petitioner and that the contract for deployment of contract

labour by the contractor with the respondent No. 2 was not renewed on its expiry and the contractor was asked not to deploy the contract labour w.e.f. 8.9.2009. It is submitted that the contractor had entered into an agreement for providing contract labour for security, housekeeping service, courier service, peon and pantry service in terms of agreements dated 5-4-1991 and 25-12-2003 entered between contractor and Gabriel India Ltd., and Gabriel India Ltd. (Engine Bearing Division) was demerged from Gabriel India Ltd., into a separate company *i.e.* M/s Anand Engine Component Ltd. in March, 2007. That M/s Anand Engine Component Ltd. and contractor entered into a fresh agreement dated 5-10-2007 as per which the contractor was to provide the contract labour up to 31-12-2008 and contract would automatically stand expired unless and until further extended on mutually agreed terms and conditions. That in Feb., 2008, Federal Mogul took controlling interest in Anand Engine Component Ltd. and renamed as Federal Mogul Bearing India Ltd., *vide* letter dated 7-9-2009 which was also communicated to the contractor that as the agreement for providing contract labour was not extended in terms of agreements dated 5-4-1991, 25-12-2003 and 5-10-2007, the contractor need not deploy its labour with the respondent No.1 *w.e.f.* 8-9-2009 as the contract was not extended with the contractor. On merits, it has been asserted that the petitioner was the employee of contractor and *vide* agreement dated 25-3-1991, Asla Security Services undertook to provide contract labour for security, housekeeping service, courier service, peon and pantry service to Gabriel India Ltd., and also undertook to pay their ESI and EPF and the wages were being paid to the petitioner by the contractor and even muster roll, attendance register was being maintained by the contractor. It is further asserted that at no point of time any settlement was signed by Federal Mogul Bearing India Ltd., Gabriel India Ltd. and Anand components Ltd., with contractor, contract employees and Gabriel Employees Union, INTUC as the employees of the contractor were not the employees of respondent No.2. As the agreements dated 5-4-1991, 25-12-2003 and 5-10-2007 were upto 31-1-22008 and were not extended mutually thus automatically came to an end and the replying respondent asked the contractor not to deploy the labour *w.e.f.* 8-9-2009 and as such the services of the petitioner were never terminated by the replying respondent and there has been no violation of provisions of the Act as it is the sole responsibility of the contractor to make payment of compensation/salary to the petitioner. Since, the petitioner was not the employee of respondent No. 2, hence, industrial dispute has wrongly been raised against the replying respondent and there is no violation of section 25-F, G, H and N of the Act as the services of the petitioner had been engaged through contractor and the replying respondent is not liable to pay any compensation to the petitioner. The respondent No. 2 also prayed for the dismissal of the claim petition.

5. By filing separate rejoinders to the replies filed by the respondents, the petitioner reaffirmed his allegations by denying those of the respondents.

6. Pleadings of the parties gave rise to the following issues which were struck on 27.9.2012.

1. Whether the services of the petitioner were terminated without holding enquiry and without serving any chargesheet? . .*OPP.*

2. Whether the services of the petitioner were terminated in violation of the provisions of the Industrial Disputes Act, 1947? . .*OPP.*

3. Whether this petition is not maintainable? . .*OPR.*

4. Whether the claim petition is bad for non-joinder of necessary parties? . .*OPR.*

5. Whether the petitioner has concealed material facts? If so, its effect? . .*OPR.*

6. Relief.

7. Besides having heard the leaned counsel for the parties, I have also gone through the written arguments submitted by the petitioner and the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under :

Issue No.1	Yes
Issue No.2	Yes
Issue No.3	No
Issue No.4	Not pressed
Issue No.5	Not pressed
Relief	Reference answered in favour of the petitioner and against respondent No.2 per operative part of award.

REASONS FOR FINDINGS

Issues No.1&2

9. Being interlinked and correlated, both these issues are being taken up together for discussion and decision.

10. Learned Counsel for the petitioner contended that the petitioner is the employee of respondent no. 2 as he had been engaged by respondent No. 2 and even at the time of termination of the services of the petitioner there was no contract between respondent No. 1 and respondent No. 2. He further contended that the petitioner had completed more than 240 days in each calendar year, hence, his services could not be terminated without complying with the provisions of sections 25-F of the Act and even after the termination of the services of the petitioner, the respondent No. 2 had engaged fresh hands and retained his juniors in violation of the provisions of sections 25-G and H of the Act. He also contended that at the time of termination of the services of the petitioner, demand notice was pending before the Conciliation Officer and the services of the petitioner had been terminated in violation of the provisions of Section 33 of the Act.

11. On the other hand, Ld. counsel for the respondent No.1 contended that the petitioner was not the employee of respondent No.1 as there was no contract/agreement after 31-12-2008 between respondent No.1 and respondent No.2 and as such the services of petitioner were never terminated by respondent No.1.

12. Learned counsel for respondent No.2 contented that for the smooth functioning of the company, the services of the petitioner had been engaged through contractor as per agreements executed between respondent No.1 and 2 and his wages, EPF, ESI, and other benefits were being paid by the contractor. That the respondent No.2 had no concern with the engagement and disengagement of the petitioner. He further contended that since the agreement was not renewed between respondent No.1 and 2, for providing the contract labour, hence, the services of the petitioner stood automatically terminated. He also contended that since the

petitioner had not been engaged by the respondent No.2 company, who had worked with the company through contractor, hence, there is no need to comply with the provisions of the Act by respondent No. 2.

13. To prove his case, the petitioner examined two PWs including himself. The petitioner stepped into the witness box as PW-1 to depose that he was engaged as safai karamchari by the Gabriel India Ltd. in the year, 1982 and worked as such till 8-9-2009 continuously. That Gabriel India Ltd. is now known as Federal Mogul Company and he was working under respondent no.2 company and he was the member of workers union known as Gabriel Employees Union. From the date of his engagement, settlements used to be arrived at as per which their salaries and allowances used to be increased. The copies of settlements are Ex.PW-1/A and Ex. PW-1/B. Thereafter, they raised demand notice Ex.PW-1/C to the company through union which is still pending before the Conciliation Officer. That his services were terminated without issuance of any notice and conducting any enquiry. The work which he was performing is still available with the company and even the company had engaged fresh persons after his termination. He is unemployed from the date of his termination. When cross-examined on behalf of respondent No.1, he admitted that his services were terminated in the year, 2009 by the company and that he had nothing to do with the respondent No.1. He further admitted that the union had entered into agreement with the company. In cross-examination on behalf of respondent No.2, he expressed his ignorance that initially his services had been engaged by the owner of M/s Vikram Services and was deputed with Gabriel India. He admitted that he had no appointment letter issued by the Gabriel India Ltd. He expressed his ignorance that after the expiry of contract his services had been terminated by respondent No.1. He denied that he was not the employee of Federal Mogul Bearings India.

14. PW-2 Shri Dwarka Nath, has stated that he was the President of the employees union which is duly registered and the petitioner is the active member of the union being safai karamchari and initially he had been engaged by the company M/s Gabriel India Ltd., and thereafter the services of the petitioner were being shown through bogus contractor. He further stated that the wages of the petitioner were being paid by the company and the wages of the workers used to be enhanced as per settlement arrived at between the union and the management and on the expiry of the date of settlement Ex. PW-1/B, they filed the demand notice Ex. PW-1/C to the company, the copy of which was also sent to the Labour Inspector, Parwanoo and Labour-*cum*-Conciliation Officer, Solan upon which the company was called by the Conciliation Officer but despite that the company failed to arrive at settlement which is still pending and the settlement was to be effected from December, 2007. The demands as per Ex. PW-1/C are genuine in view of the increase in the price index and the termination of the services of the petitioner is totally illegal and against the provisions of the Act. In cross-examination on behalf of respondent No.1, he admitted that when respondent No.2 took over Gabriel India Ltd., Parwanoo all the employees were also taken by it (respondent No.2) and that since then the respondent No.2 is making the payment of wages to the employees. He admitted that when the petitioner was disengaged no intimation was given to the union and that the demands as per Ex. PW-1/C are honored/fulfilled by respondent No.2. When cross-examined on behalf of respondent No.2, he denied that he is not the employee of the respondent No.2. He admitted that his services had been terminated by the company after obtaining permission of this Court. He denied that initially the petitioner was the employee of M/s Vikram Services Parwanoo, Prop. Shri B.M. Malhotra (contractor). He denied that the petitioner was the employee of M/s Asla Security (respondent No.1) since April, 1991 and that PF/ESI contribution/wages were also being paid by respondent No.1. He further denied that the services of the petitioner were not deputed with company in terms of agreements dated 5-4-1991, 25-12-2003 and 5-10-2007 and that the agreement to provide contract labour by contractor was terminated *vide* letter dated 7-9-2009. He also denied that the petitioner was not the employee of respondent No.2.

15. On the contrary, the respondent No.1 examined one witness. RW-1 Shri Inderjit Singh, Prop. of respondent No.1 tendered his affidavit Ex. RA-1 in evidence wherein he reiterated almost all the averments as made in the reply. In cross-examination, on behalf of respondent No.2 he admitted that he started managing the affairs of Asla Security Services after May, 2011. He denied that before May, 2011 he was not aware of the contracts between Asla Security and its clients. He admitted that his father as Prop. of Asla Security Services had entered into an agreement with Anand Engine Components to provide contract labour for security, house-keeping etc. and his father being prop. of Asla Security Services also entered into an agreement with Gaberial India Ltd., to provide contractual labour and he also used to go to disburse the salaries in various companies and their contract with Gabriel India came to an end in the year, 2008. He admitted that Asla Security Pvt. Ltd. was paying wages, maintaining the entire records under labour laws, making payments of ESI, EPF to the contractual employees deputed with Gabriel and Anand Engine Ltd. He expressed his ignorance that agreement Ex. PW-1/B had been entered between his father and the workers deployed with Gabriel India Ltd. and Gabriel Employees Union. He expressed his ignorance that upto 7-9-2009, the Prop. of Asia Security Services had paid salary to the petitioner and also other contributions such as ESI, EPF. He also expressed his ignorance that on 7-9-2009, respondent No.2 had told Asla Security Services not to send the petitioner/contract labour *w.e.f.* 8-9-2009. He denied that the petitioner and other contract workers are the employee of Asla Security Services and that entire payment of gratuity and compensation was to be paid by the Asla Security Services. When cross-examined on behalf of petitioner, he admitted that the petitioner was not their employee and that he was the employee of respondent No.2 and they are liable to pay all salaries and all other benefits. He further admitted that Asla Security Services had no contract with FMBL to provide them contractual labour including Safai Karamchari and that the duty from petitioner was taken by respondent No.2. He also admitted that entire documents, as aforesaid, were not executed in his presence nor he was party to the same.

16. Respondent No.2 examined six witnesses. RW-2/1 Shri Rishabh, from PF office produced the record *w.e.f.* April, 2009 till 2010. He stated that other record had been destroyed *vide* certificate Ex. RW-2/1/A. He also produced Form No.6 Ex.RW-2/1/B. In cross-examination on behalf of petitioner he could not state as to who had deposited EPF as per Ex. RW-2/1-B. He denied that in the name of Asla Security anyone can deposit the amount as shown in Ex. RW-2/1/B but explained that the employer code is of Asia Security. When cross-examined on behalf of respondent No.2, he denied that as per Ex. RW-2/1/B, it cannot be said that who had deposited the money.

17. RW-3 Shri Rohit Garg, Finance Executive with respondent No.2 has stated that the copies of bills raised by Asla Security along-with the challans of PF, ESI, list of workers working under Asla Security and the payments made by cheque to Asia Security by Federal Mogul Bearings Ltd., are Ex. RW-3/A to Ex. RW-3/P and Ex. RW-3/Q is the summary of the entire payment made to Asla Security Services in respect of the bills raised. In cross-examination on behalf of respondent no.1, he expressed his ignorance that who had signed the bills Ex. RW- 3/A to Ex. RW-3/P. When cross-examined on behalf of petitioner he admitted that the record which has been exhibited has not been prepared by him. He denied that the record has been prepared by Federal Mogul as per their own. He denied that the petitioners were working under Federal Mogul but admitted that the work is being taken from the workers by Federal Mogul.

18. RW-4 Shri Balwinder Singh, Manager HR with respondent No.2 tendered in evidence his affidavit Ex. RW-4/A wherein he reiterated almost all the averments as stated in the reply filed by respondent No.2. He also tendered in evidence the copies of authority letter dated 16-5-2014 and Board Resolution dated 28-11-2013 mark X and Y, the copy of license issued to Asla Security Services dated 21-10-1991 mark Z, the copy of registration certificate

alongwith the name and address of the contractor mark Z-1 (14 pages), the copy of agreements RW-4/B and Ex. RW-4/C, the copy of letter dated 5-10-2007 Ex. RW-4/D, the copy of contract of security services dated 5-10-2007, mark Z-2, the copy of termination letter of contract dated 7-9-2009 Ex. RW-4/E and letter dated 9-9-2009 Ex. RW-4/F. In cross-examination on behalf of respondent No.1, he admitted that no contract was signed with Asla Security Services after 31-12-2008. He further admitted that the company enters into written agreement with the contractor for keeping contract labour. He denied that the contract with the Asla Security Services had ended on 31-12-2008. He further denied that termination letter Ex. RW-4/E was never handed-over to Asla Security Services and that the same was issued by the company in order to escape its liability. He also denied that entire record of the petitioner used to remain in the company. When cross-examined on behalf of petitioner he denied that the petitioner was engaged as safai karamchari by the Gabriel India Company in the year 1982 and that he had worked till 7-9-2009 under the company. He further denied that the petitioner used to do the work under the directions of the company and that no person from Asla Security Services used to sit in the company premises. He admitted that no contract was signed in writing with Asla Security Services after 31-12-2008 for engaging the petitioner. He denied that since the petitioner was the worker of the company therefore he continued with the company after the expiry of the agreement. He further denied that the company used to sanction the leave of the petitioner. He admitted that the work which was used to be performed by the petitioner is still available with the company. He denied that all the material for cleaning the factory used to be purchased by the company and that the services of the petitioner were terminated by the company on 8-9-2009. He admitted that the company had not issued any notice and paid any compensation to the petitioner. He admitted that Ex. RW-4/E was neither sent through registered letter nor signatures of Mr. A.S Lali were obtained regarding its receipt. He further admitted that prior to 31-12-2008 all the works to be done by the company with the contractor were in writing and that the petitioner was the member of Gabriel employees union Parwanoo. He also admitted that demand notice Ex. PW-1/C was given to the company. He denied that in the settlement the company used to be a party and the company used to implement the settlement. He further denied that the company has wrongly shown the petitioner as contractor worker.

19. RW-6 Shri Rajeev Kumar, Social Security Officer, ESIC Parwanoo has stated that as per summoned record Asla Security Services had deposited ESI contribution in respect of Balwant Rai, Nattu Ram, Munna Lal and Nirmala Devi from 1.10.2006 to 31.3.2007 and the record brought by him is Ex. RW-6/A (58 leaves). When cross-examined on behalf of respondent No.1 he expressed his ignorance that who had deposited the ESI contribution with ESI Corporation and as to whether any enquiry has been conducted regarding non-deposit of the ESI contribution after Sept., 2008. In cross-examination, on behalf of the petitioner he denied that any person can deposit the ESI contribution with respect to the ESI code number of Asla Security. He admitted that they do not enquire about the person who deposits the contribution by way of challan. He admitted that after March, 2007, no contribution was deposited by the Asia Security of above said workers. He further admitted that is mandatory for every employer to deposit the ESI contribution in the corporation with respect to the workers on their rolls.

20. RW-7 Shri Agya Ram Sharma has stated that he was working as security guard in M/s Asla Security Services *w.e.f.* the year 2003 till 2007 and thereafter as security supervisor till the year, 2008 and he had been authorized to give statement on behalf of Asla Security Services vide authority letter Ex. RW-7/A. He had not brought the summoned record as the same was deposited by him with Mr. Balwinder Singh, Manager (HR) of Federal Mogul Bearing India Ltd. on 1.8.2008. In cross-examination on behalf of petitioner he admitted that the petitioner was working as sweeper in the factory of respondent No.2 prior to his engagement. He further admitted that the petitioner was under the control and supervision of respondent No.2 and all the registers and adult workers register were in the custody of respondent No.2 and the

attendance of the petitioner was used to be marked by him in the office. The respondent No.2 company used to pay all the cheques in the name of Asla Security Services for payment of wages and the same were disbursed by Mr. A.S. Lali of Asla Security Services in the presence of Mr. G.P. Kala, Assistant Manager, HR of respondent No.2. He admitted that the petitioner was working in the company even after 1-8-2008.

21. After the closer scrutiny of the record of the case, it has become clear that the petitioner was working as safai karamchari in the premises of the respondent No.2 company and his services were terminated *w.e.f.* 8-9-2009. It is also not disputed that the respondent No.2 company had a certificate of registration from the prescribed authority and the respondent No.1 had the license issued by the competent authority to deploy the contract labour as per the provisions of sections 7 & 12 of the Contract labour (Regulation and Abolition Act). It is also clear that *vide* agreement dated 25-3-1991 Ex. RW-4/B, M/s Vikram Services Parwanoo had entered into an agreement with the respondent No.1 M/s Asla Security Services *vide* which the respondent No.1 undertook to provide contract labour for security, housekeeping service etc. It has also become clear that *vide* agreement dated 5-4-1991, Ex. RW-4/C, the respondent No.1 undertook to provide the contract labour to Gabriel India Ltd., for security, housekeeping services, courier services etc., from time to time. RW-1 admitted in cross-examination that the agreements Ex. RW-4/B and Ex. RW-4/C, bear the signatures of his father who had died in a road accident. It is also not disputed that Gabriel India Ltd., (engine bearing division) was demerged from Gabriel India Ltd., into a separate company *i.e.* M/s Anand Engine Components in March, 2007. *Vide* letter dated 5-10-2007 Mark Z-2, M/s Anand Engine Components Ltd., had offered the contract to respondent No.1 for providing security services with the stipulation that the contract would be valid upto 31-12-2008 and it has further been stipulated therein that the agreement shall automatically expire unless and until further extended on mutually agreed terms and conditions. In March, 2008 M/s Federal Mogul Components took controlling interest in Anand Engine Components and renamed as Federal Mogul Bearings India Ltd. RW-4 Shri Balwinder Singh, Manager HR stated in his affidavit Ex. RW-4/A that the petitioner was never an employee of respondent No.2 and only respondent No.1 was maintaining attendance and leave registers, over time register and was complying with all the labour laws, legislation and filling all the returns under the labour laws including the payment of ESI and EPF. He further deposed that the entire supervision and control over the contract labour was of respondent No.1 and its supervisors. RW-1 admitted in cross- examination that his father had entered into an agreement with Anand Engine Components and Gabriel India Ltd., to provide contractual labour for security, housekeeping etc., and the said contract came to an end in the year, 2008. He also admitted that the respondent No.1 was paying wages, maintaining the entire record under the labour laws, making payments of ESI, EPF to the contractual employees deputed with Gabriel and Anand Engine Ltd. Thus, the evidence and material on record particularly the admission of RW-1 indicates that the respondent No.1 had a complete control over the petitioner till 31-12-2008 as it used to disburse the salaries to the workers, maintain the entire records under the labour laws and make the contribution towards ESI and EPF of the contractual workers deputed with respondent No.2. Hence, it can safely be held that the petitioner was the employee of respondent No.1 contractor who deployed him with respondent No.2 company till 31-12-2008 when the contract between the respondent No.2 company and respondent No.1 came to an end.

22. From the perusal of material on record it has become clear that the services of the petitioner were terminated *w.e.f.* 8-9-2009 whereas the contract between respondent No.1 and respondent No.2 had expired on 31-12-2008. Now, the question which arises for consideration before this Court, as to whether the petitioner was the employee of respondent No.1 or the employee of respondent No.2 after the termination of contract *i.e.* 31-12-2008. RW-1 stated in his evidence by way of affidavit that the contract between respondent No.1 and respondent No.2 expired on 31-12-2008 and thereafter it was not renewed further and the services of the

petitioner were hired by respondent No.2 after the termination of the contract on 31-12-2008 and respondent No.1 had never terminated the services of the petitioner *w.e.f.* 8-9-2009. Though, the case of the respondent No.2 is that after 31-12-2008 the services of the petitioner remained continued as per common understanding with the contractor, however, to substantiate its case no cogent and satisfactory evidence has been led by the respondent No.2. RW-4 admitted in cross- examination that no contract was signed in writing with Asla security Services after 31-12-2008 but the services of the petitioner were continued as per common oral understanding with the contractor. However, his statement to this effect is not worthy of credence as no company would have a common understanding with the contractor in the absence of anything in writing with respect to the continuation of the services of the employees/workers. The case of respondent No.2 is that *vide* letter dated 7-9-2009 Ex. RW-3/E it was communicated to the respondent No.1 that as the agreement for providing contract labour has not been extended as such respondent No.1 need not to deploy labour to respondent No.2 *w.e.f.* 8-9-2009. However, admittedly this letter has neither been sent through registered post nor signatures of the contractor were obtained acknowledging the receipt of the same as such no benefit can be derived by the respondent No.2 from the aforesaid letter. Moreover, no plausible explanation has been given by the respondent No.2 as to how the services of the petitioner were being continued after 31-12-2008 despite the fact that the contract with respondent No.1 stood expired on 31-12-2008. It has been specifically stipulated in the letter dated 5-10-2007 Mark Z-2 that the contract would be valid upto 31-12-2008 and it shall automatically expire unless and until further extended on mutually agreed terms and conditions. It is the admitted case of the respondent No.2 that no contract was signed after 31-12-2008. The learned counsel for the respondent No.2 vehemently argued that even after 31-12-2008, the respondent No.1 was paying wages to the petitioner and also was making the contribution towards ESI and EPF account of the petitioner and in this respect he placed reliance upon the bills allegedly raised by Asla Security Services along-with the challans of PF, ESI Ex. RW-3/A to RW-3/P which were produced by RW-3, the Finance Executive of respondent No.2. The bills Ex. RW-3/A to Ex. RW-3/L pertain to the period from May, 2008 to December, 2008 whereas the bill Ex. RW-3/M pertains to March, 2009, Ex. RW-3/N pertains to June, 2009, Ex. RW-3/O pertains to July, 2009 and Ex. RW-3/P pertains to August, 2009. However, these bills have not been proved in accordance with law as admittedly these bills have not been prepared by RW-3 and he also admitted in cross-examination that he was not aware as to who had signed and submitted the bills Ex. RW-3/A to Ex. RW-3/P. Moreover, the originals of these bills have not been produced in the Court. Therefore, no credence can be attached to these bills and no benefit can be derived by respondent No.2 from the aforesaid bills. RW-2/1 Shri Rishabh, from the office of PF Chandigarh had produced the EPF record of the workers *w.e.f.* April, 2009 to 31-3-2010 and the same is Exhibited as Ex. RW-2/1/B. However, in cross-examination he admitted that he was not aware as to who had deposited the amount of EPF in their office. Therefore, from the entire statement of RW-3, it cannot be said that after 31-12-2008, the amount of EPF pertaining to the petitioner was being deposited by respondent No.1. RW-6 an official from ESIC Parwanoo had deposed that M/s Asla Security Services had deposited the ESI contribution in respect of petitioner *w.e.f.* 1-10-2006 to 31.-7-2007 as per record Ex. RW-6/A and he further deposed that the rest of record is not available. He also admitted in cross-examination that after March 2007 no contribution was deposited by the Asla Security Services with respect to the petitioner. Therefore, from his statement, it is clear that amount of ESI pertaining to the petitioner had not been deposited by respondent No.1 after 31-12-2008. There is no other evidence on record to suggest that the salary/wages to the petitioner were being paid by the respondent No.1 after 31-12-2008. Similarly, there is no satisfactory evidence on record to suggest that the respondent No.1 was making the contribution towards ESI and EPF of the petitioner after 31-12-2008. Therefore, taking into consideration the aforesaid facts and various attending circumstances, it is clear that the respondent no.1 had no role to play after 31-12-2008 so far as the petitioner is concerned and the petitioner had been working continuously with respondent No.2 in its premises after 31-12-2008 till the time of his termination *i.e* 8.9.2009 and

as such the petitioner will have to be treated as the employee of respondent No. 2 company after 31-12-2008.

23. It has been proved on record that the petitioner had been in continuous service with respondent No.2 after 31-12-2008. It is not disputed that the petitioner had completed 240 days in twelve calendar months preceding his termination. It has also become clear that neither any chargesheet was issued to the petitioner nor any enquiry was conducted against him prior to his termination. It is also an admitted fact that before terminating his services neither any notice had been issued to the petitioner nor \he was paid any compensation by respondent No.2. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent No.2 to have complied with the provisions of Section 25- F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent No.2 has failed to comply with the provisions of Section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd.,** Vs. **Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

> **"34. …….The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant- Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."**

24. In the present case also as observed aforesaid, the respondent No.2 has failed to comply with the provisions of section 25-F of the Act before terminating his services. Hence, In view of the law laid down by the Hon'ble Supreme Court (*supra*) and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 8-9-2009 by the respondent No.2 without holding enquiry and without serving chargesheet and that too without complying with the provisions of section 25-F of the Act, is illegal and unjustified.

25. Therefore, in view of my foregoing discussion as it has been held that the services of the petitioner *w.e.f.* 8-9-2009 had been illegally terminated by respondent No.2, hence, it has to be seen as to what relief of service benefits the petitioner is entitled from respondent No.2. It is by now well settled that if the termination of employee is found to be illegal, the relief by way of reinstatement with back-wages is not automatic. The Hon'ble Supreme Court in **Santosh Kumar Seal and others reported in 2010 LLR 677: 2010 III CLR 17 SC,** has held that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that mandatory compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

26. In Jagbir Singh *Vs.* Haryana State Agricultural Marketing Board (2009) 15 **SCC 327, the Hon'ble Supreme Court** has held that:

> "It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of

reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

27. In the present case, even though the termination of the petitioner is held to be illegal but his reinstatement would not be appropriate relief as it has been stated at bar by the learned counsel for the respondent No.2 that now the work of cleaning and sweeping of the unit has been given on outsource basis. Therefore, in such a situation it would not be appropriate to make the order for reinstatement of the petitioner in the present case. Hence, taking into account all the facts and circumstances of the case, the ends of justice would be met, if the lump sum compensation is awarded to the petitioner. Therefore, in my view the petitioner is entitled to receive a suitable, appropriate, just and equitable compensation from the respondent No. 2. Since, the services of the petitioner have been terminated illegally by the respondent No. 2 company, therefore, in such a situation, it would be quite reasonable and justified if lump sum compensation of ₹ 3,00,000/- (₹ Three lakhs only) is awarded to the petitioner. Consequently, both these issue are decided in favour of the petitioner and against the respondent No.2.

Issue No.3 :

28. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issues no. 4 & 5 :

29. During the course of arguments, these issues have not been pressed by the learned counsel for respondents. Hence, these issues are decided in favour of the petitioner and against the respondents.

Relief :

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is partly allowed and as such the respondent no.2 company is directed to pay ₹3,00,000/- (₹ Three lakhs only) as lump sum compensation to the petitioner within a period of three months from today failing which the same shall carry interest @ 9% per annum from the date of award till its realization. The reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 30th Day of August, 2017.

(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal-cum- *Labour Court, Shimla.*

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM- **LABOUR COURT, SHIMLA**

Ref. No. 110 of 2010

Instituted on 27-10-2010

Decided on 30-8-2017

Nirmala Devi w/o Shri Bant Ram r/o House no. 1752, Balmiki Basti, Upper Mohalla, Kalka, District Panchkula Haryana. . .*Petitioner.*

VERSUS

1. M/s Asla Security Services, SCO No. 88, Sector-35C Chandigarh UT through, its Proprietor Shri Inder Jeet Singh Lally.

2. M/s Federal Mogul Bearing India Ltd., Sector-2, Parwanoo, District Solan, H.P. through its General Manager. . .*Respondents.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.K. Khidtta, Advocate

For respondent No.1 : Ms. Monika Singh, Advocate

For respondent No.2 : Shri Rahul Manajan, Advocate

AWARD

The following reference has been sent by the appropriate government for adjudication:

"**Whether the verbal termination of the services of Smt. Nirmala Devi w/o Shri Bant Ram by (1) Shri A.S. Lali, s/o Shri Lal Singh Lali, M/s Asia Security Services SCO No. 88, Sector-35-C, Chandigarh UT (Contractor) and (2) The General Manager, Federal Mogul Bearings India Ltd., Plot no.5, Sector-2, Parwanoo, District Solan, H.P. (Principal Employer)** w.e.f. **8-9-2009 without serving chargesheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the above employer?"**

2. Briefly, the case of the petitioner is that she was engaged as Safai Karamchari by the Gabriel India Ltd., company presently known as M/s Federal Mogul Bearings India Ltd., (hereinafter referred to as respondent No.2) in the year, 1983 and worked as such till 9-9-2009 but later on she was shown to be engaged through respondent No. 1 by the respondent No. 2 just to frustrate her rightful claim and to save themselves from the liability of the workers. That the petitioner being the member of Gabriel Employees Union, INTUC, Parwanoo, District Solan, H.P. alongwith other workers used to settle their claim including increase in the salary of the workers by way of long term settlement with the respondents and after the expiry of settlement, new settlement used to be executed between the parties and the salary and other benefits used to be increased/given to the workers as per the price rise and keeping in view the other relevant

factors by the respondents and even the workers also used to perform their duties as agreed in the settlement. It is further stated that last long term settlement between the workers union and respondents was executed for the period from 1-1-2003 to 31-12-2007 and after the expiry of the settlement, the workers through their union approached the respondents for the settlement of their demands but no settlement was arrived at between the parties and ultimately the workers were forced to file the demand notice. It is also stated that during the pendency of the demand notice, the services of the petitioner were terminated orally by the respondents *w.e.f.* 8-9-2009 without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) as no notice or pay in lieu of notice and retrenchment compensation has been paid by the respondents to the petitioner and even her services were not re-engaged despite having been requested for her reinstatement. That the work and conduct of the petitioner always remained up to the satisfaction of the officials of the respondents and she had completed 240 days in each calendar year and her services had been terminated without assigning any reason and after her termination, the respondents have engaged new persons, in violation of the provisions of Section 25-H of the Act, who are still working with them and even the work which the petitioner was performing is still available with the respondent No.2. That while terminating the services of the petitioner, the respondent company has violated the provisions of Section 25-F, 25-G, 25-H and 25-N of the Act and that the petitioner is a workman as defined in the Act as she used to work manually. Against this back-drop a prayer has been made that her termination *w.e.f.* 8-9-2009 be set aside and quashed and she be reinstated in service on the same post with all consequential service benefits including back-wages etc.

3. By filing separate reply, the respondent No.1 had contested the claim of the petitioner wherein preliminary objections had been taken *qua* maintainability, estoppel, concealment of material facts, no cause of action and that there is no employer and employee relationship between the petitioner and respondent No.1. On merits, it has been asserted that the petitioner was the employee of respondent No.2 and no settlement has ever been entered between the petitioner and respondent No.1 at any point of time. It is denied that the services of the petitioner have been orally terminated *w.e.f.* 8-9-2009 by the respondent No.1. That the respondent No.2 without giving the two month's notice terminated the contract by violating the terms of the contract. That the respondent No.2 is liable to pay the entire benefits, if any, to the petitioner. It is asserted that the petitioner never visited the office of respondent No.1 and being the principle employer, the respondent No.2 terminated the services of petitioner. The respondent No.1 prayed for the dismissal of the claim petition.

4. The respondent No.2 also filed separate reply wherein preliminary objections had been taken *qua* maintainability, that there exists no employee and employer relationship between the replying respondent and petitioner and that the contract for deployment of contract labour by the contractor with the respondent No.2 was not renewed on its expiry and the contractor was asked not to deploy the contract labour *w.e.f.* 8-9-2009. It is submitted that the contractor had entered into an agreement for providing contract labour for security, housekeeping service, courier service, peon and pantry service in terms of agreements dated 5-4-1991 and 25-12-2003 entered between contractor and Gabriel India Ltd., and Gabriel India Ltd. (Engine Bearing Division) was demerged from Gabriel India Ltd., into a separate company *i.e.* M/s Anand Engine Component Ltd. in March, 2007. That M/s Anand Engine Component Ltd. and contractor entered into a fresh agreement dated 5-10-2007 as per which the contractor was to provide the contract labour up to 31-12-2008 and contract would automatically stand expired unless and until further extended on mutually agreed terms and conditions. That in Feb., 2008, Federal Mogul took controlling interest in Anand Engine Component Ltd. and renamed as Federal Mogul Bearing India Ltd., *vide* letter dated 7-9-2009 which was also communicated to the contractor that as the agreement for providing contract labour was not extended in terms of agreements dated 5-4-1991, 25-12-2003 and 5-10-2007, the contractor need not deploy its labour

with the respondent No.1 *w.e.f.* 8-9-2009 as the contract was not extended with the contractor. On merits, it has been asserted that the petitioner was the employee of contractor and *vide* agreement dated 25-3-1991, Asla Security Services undertook to provide contract labour for security, housekeeping service, courier service, peon and pantry service to Gabriel India Ltd., and also undertook to pay their ESI and EPF and the wages were being paid to the petitioner by the contractor and even muster roll, attendance register was being maintained by the contractor. It is further asserted that at no point of time any settlement was signed by Federal Mogul Bearing India Ltd., Gabriel India Ltd. and Anand Components Ltd., with contractor, contract employees and Gabriel Employees Union, INTUC as the employees of the contractor were not the employees of respondent No.2. As the agreements dated 5-4-1991, 25-12-2003 and 5-10-2007 were upto 31-12-2008 and were not extended mutually thus automatically came to an end and the replying respondent asked the contractor not to deploy the labour *w.e.f.* 8-9-2009 and as such the services of the petitioner were never terminated by the replying respondent and there has been no violation of provisions of the Act as it is the sole responsibility of the contractor to make payment of compensation/salary to the petitioner. Since, the petitioner was not the employee of respondent No.2, hence, industrial dispute has wrongly been raised against the replying respondent and there is no violation of Section 25-F, G, H and N of the Act as the services of the petitioner had been engaged through contractor and the replying respondent is not liable to pay any compensation to the petitioner. The respondent No. 2 also prayed for the dismissal of the claim petition.

5. By filing separate rejoinders to the replies filed by the respondents, the petitioner reaffirmed her allegations by denying those of the respondents.

6. Pleadings of the parties gave rise to the following issues which were struck on 27.9.2012:

1. Whether the services of the petitioner were terminated without holding enquiry and without serving any chargesheet? . .*OPP.*

2. Whether the services of the petitioner were terminated in violation of the provisions of the Industrial Disputes Act, 1947? . .*OPP.*

3. Whether this petition is not maintainable? . .*OPR.*

4. Whether the claim petition is bad for non-joinder of necessary parties? . .*OPR.*

5. Whether the petitioner has concealed material facts? If so, its effect? . .*OPR.*

6. Relief.

7. Besides having heard the learned counsel for the parties, I have also gone through the written arguments submitted by the petitioner and the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under :

Issue No.1 Yes

Issue No.2 Yes

Issue No.3 No

Issue No.4 Not pressed

Issue No.5 Not pressed

Relief Reference answered in favour of the petitioner and against respondent No.2 per operative part of award.

REASONS FOR FINDINGS

Issues No.1&2 :

9. Being interlinked and correlated, both these issues are being taken up together for discussion and decision.

10. Learned Counsel for the petitioner contended that the petitioner is the employee of respondent No.2 as she had been engaged by respondent No.2 and even at the time of termination of the services of the petitioner there was no contract between respondent No.1 and respondent No.2. He further contended that the petitioner had completed more than 240 days in each calendar year, hence, her services could not be terminated without complying with the provisions of Sections 25-F of the Act and even after the termination of the services of the petitioner, the respondent No.2 had engaged fresh hands and retained her juniors in violation of the provisions of Sections 25-G and H of the Act. He also contended that at the time of termination of the services of the petitioner, demand notice was pending before the Conciliation Officer and the services of the petitioner had been terminated in violation of the provisions of Section 33 of the Act.

11. On the other hand, Ld. counsel for the respondent no.1 contended that the petitioner was not the employee of respondent No.1 as there was no contract/agreement after 31-12-2008 between respondent No.1 and respondent No.2 and as such the services of petitioner were never terminated by respondent No.1.

12. Learned counsel for respondent No.2 contented that for the smooth functioning of the company, the services of the petitioner had been engaged through contractor as per agreements executed between respondent No.1 and 2 and her wages, EPF, ESI, and other benefits were being paid by the contractor. That the respondent No. 2 had no concern with the engagement and disengagement of the petitioner. He further contended that since the agreement was not renewed between respondent No.1 and 2, for providing the contract labour, hence, the services of the petitioner stood automatically terminated. He also contended that since the petitioner had not been engaged by the respondent No.2 company, who had worked with the company through contractor, hence, there is no need to comply with the provisions of the Act by respondent No. 2.

13. To prove her case, the petitioner examined two PWs including herself. The petitioner stepped into the witness box as PW-1 to depose that she was engaged as safai karamchari by the Gabriel India Ltd. in the year, 1983 and worked as such till 8-9-2009 continuously. That Gabriel India Ltd. is now known as Federal Mogul Company and she was working under respondent No.2 company and she was the member of workers union known as Gabriel Employees Union. From the date of her engagement, settlements used to be arrived at as per which their salaries and allowances used to be increased. The copies of settlements are Ex.PW-1/A and Ex. PW-1/B. Thereafter, they raised demand notice Ex.PW-1/C to the company through union which is still pending before the Conciliation Officer. That her services were

terminated without issuance of any notice and conducting any enquiry. The work which she was performing is still available with the company and even the company had engaged fresh persons after her termination. She is unemployed from the date of her termination. When cross-examined on behalf of respondent No.1, she admitted that her services were terminated in the year, 2009 by the company and that she had nothing to do with the respondent No.1. She further admitted that the union had entered into agreement with the company. In cross-examination on behalf of respondent No.2, she expressed her ignorance that initially her services had been engaged by the owner of M/s Vikram Services and was deputed with Gabriel India and that she had no appointment letter issued by the Gabriel India Ltd. She expressed her ignorance that after the expiry of contract her services had been terminated by respondent No.1. She denied that she was not the employee of Federal Mogul Bearing India Ltd.

14. PW-2 Shri Dwarka Nath, has stated that he was the President of the employees union which is duly registered and the petitioner is the active member of the union being safai karamchari and initially she had been engaged by the company M/s Gabriel India Ltd., and thereafter the services of the petitioner were being shown through bogus contractor. He further stated that the wages of the petitioner were being paid by the company and the wages of the workers used to be enhanced as per settlement arrived at between the union and the management and on the expiry of the date of settlement Ex. PW-1/B, they filed the demand notice Ex. PW-1/C to the company, the copy of which was also sent to the Labour Inspector, Parwanoo and Labour-*cum*-Conciliation Officer, Solan upon which the company was called by the Conciliation Officer but despite that the company failed to arrive at settlement which is still pending and the settlement was to be effected from December, 2007. The demands as per Ex. PW-1/C are genuine in view of the increase in the price index and the termination of the services of the petitioner is totally illegal and against the provisions of the Act. In cross-examination on behalf of respondent No.1, he admitted that when respondent No.2 took over Gabriel India Ltd., Parwanoo all the employees were also taken by it (respondent No.2) and that since then the respondent No.2 is making the payment of wages to the employees. He admitted that when the petitioner was disengaged no intimation was given to the union and that the demands as per Ex. PW-1/C are honored/fulfilled by respondent No. 2. When cross-examined on behalf of respondent No.2, he denied that he is not the employee of the respondent No.2. He admitted that his services had been terminated by the company after obtaining permission of this Court. He denied that initially the petitioner was the employee of M/s Vikram Services Parwanoo, Prop. Shri B.M. Malhotra (contractor). He denied that the petitioner was the employee of M/s Asla Security (respondent No.1) since April, 1991 and that PF/ESI contribution/wages were also being paid by respondent No.1. He further denied that the services of the petitioner were not deputed with company in terms of agreements dated 5-4-1991, 25-12-2003 and 5-10-2007 and that the agreement to provide contract labour by contractor was terminated *vide* letter dated 7-9-2009. He also denied that the petitioner was not the employee of respondent No.2.

15. On the contrary, the respondent No.1 examined one witness. RW-1 Shri Inderjit Singh, Prop. of respondent No.1 tendered his affidavit Ex. RA-1 in evidence wherein he reiterated almost all the averments as made in the reply. In cross-examination, on behalf of respondent No.2 he admitted that he started managing the affairs of Asla Security Services after May, 2011. He denied that before May, 2011 he was not aware of the contracts between Asla Security and its clients. He admitted that his father as Prop. of Asla Security Services had entered into an agreement with Anand Engine Components to provide contract labour for security, house-keeping etc. and his father being Prop. of Asla Security Services also entered into an agreement with Gaberial India Ltd., to provide contractual labour and he also used to go to disburse the salaries in various companies and their contract with Gabriel India came to an end in the year, 2008. He admitted that Asla Security Pvt. Ltd. was paying wages, maintaining the entire records under labour laws, making payments of ESI, EPF to the contractual employees

deputed with Gabriel and Anand Engine Ltd. He expressed his ignorance that agreement Ex. PW-1/B had been entered between his father and the workers deployed with Gabriel India Ltd. and Gabriel Employees Union. He expressed his ignorance that upto 7-9-2009, the Prop. of Asia Security Services had paid salary to the petitioner and also other contributions such as ESI, EPF. He also expressed his ignorance that on 7-9-2009, respondent No.2 had told Asla Security Services not to send the petitioner/contract labour *w.e.f.* 8-9-2009. He denied that the petitioner and other contract workers are the employee of Asla Security Services and that entire payment of gratuity and compensation was to be paid by the Asla Security Services. When cross-examined on behalf of petitioner, he admitted that the petitioner was not their employee and that she was the employee of respondent No.2 and they are liable to pay all salaries and all other benefits. He further admitted that Asla Security Services had no contract with FMBL to provide them contractual labour including Safai Karamchari and that the duty from petitioner was taken by respondent No.2. He also admitted that entire documents, as aforesaid, were not executed in his presence nor he was party to the same.

16. Respondent No.2 examined six witnesses. RW-2/1 Shri Rishabh, from PF office produced the record *w.e.f.* April, 2009 till 2010. He stated that other record had been destroyed *vide* certificate Ex. RW-2/1/A. He also produced Form No.6 Ex.RW-2/1/B. In cross-examination on behalf of petitioner he could not state as to who had deposited EPF as per Ex. RW-2/1-B. He denied that in the name of Asla Security anyone can deposit the amount as shown in Ex. RW-2/1/B but explained that the employer code is of Asia Security. When cross-examined on behalf of respondent No.2, he denied that as per Ex. RW-2/1/B, it cannot be said that who had deposited the money.

17. RW-3 Shri Rohit Garg, Finance Executive with respondent No.2 has stated that the copies of bills raised by Asla Security along-with the challans of PF, ESI, list of workers working under Asla Security and the payments made by cheque to Asla Security by Federal Mogul Bearings Ltd., are Ex. RW-3/A to Ex. RW-3/P and Ex. RW-3/Q is the summary of the entire payment made to Asla Security Services in respect of the bills raised. In cross-examination on behalf of respondent No.1, he expressed his ignorance that who had signed the bills Ex. RW- 3/A to Ex. RW-3/P. When cross-examined on behalf of petitioner he admitted that the record which has been exhibited has not been prepared by him. He denied that the record has been prepared by Federal Mogul as per their own. He denied that the petitioners were working under Federal Mogul but admitted that the work is being taken from the workers by Federal Mogul.

18. RW-4 Shri Balwinder Singh, Manager HR with respondent No.2 tendered in evidence his affidavit Ex. RW-4/A wherein he reiterated almost all the averments as stated in the reply filed by respondent No. 2. He also tendered in evidence the copies of authority letter dated 16-5-2014 and Board Resolution dated 28-11-2013 mark X and Y, the copy of license issued to Asla Security Services dated 21-10-1991 mark Z, the copy of registration certificate along-with the name and address of the contractor mark Z-1 (14 pages), the copy of agreements RW-4/B and Ex. RW-4/C, the copy of letter dated 5-10-2007 Ex. RW-4/D, the copy of contract of security services dated 5.10.2007, mark Z-2, the copy of termination letter of contract dated 7-9-2009 Ex. RW-4/E and letter dated 9-9-2009 Ex. RW-4/F. In cross-examination on behalf of respondent No.1, he admitted that no contract was signed with Asla Security Services after 31-12-2008. He further admitted that the company enters into written agreement with the contractor for keeping contract labour. He denied that the contract with the Asla Security Services had ended on 31-12-2008. He further denied that termination letter Ex. RW-4/E was never handed-over to Asla Security Services and that the same was issued by the company in order to escape its liability. He also denied that entire record of the petitioner used to remain in the company. When cross-examined on behalf of petitioner he denied that the petitioner was engaged as safai karamchari by the Gabriel India Company in the year 1983 and that she had

worked till 7-9-2009 under the company. He further denied that the petitioner used to do the work under the directions of the company and that no person from Asla Security Services used to sit in the company premises. He admitted that no contract was signed in writing with Asla Security Services after 31-12-2008 for engaging the petitioner. He denied that since the petitioner was the worker of the company therefore she continued with the company after the expiry of the agreement. He further denied that the company used to sanction the leave of the petitioner. He admitted that the work which was used to be performed by the petitioner is still available with the company. He denied that all the material for cleaning the factory used to be purchased by the company and that the services of the petitioner were terminated by the company on 8-9-2009. He admitted that the company had not issued any notice and paid any compensation to the petitioner. He admitted that Ex. RW-4/E was neither sent through registered letter nor signatures of Mr. A.S Lali were obtained regarding its receipt. He further admitted that prior to 31-12-2008 all the works to be done by the company with the contractor were in writing and that the petitioner was the member of Gabriel employees union Parwanoo. He also admitted that demand notice Ex. PW-1/C was given to the company. He denied that in the settlement the company used to be a party and the company used to implement the settlement. He further denied that the company has wrongly shown the petitioner as contractor worker.

19. RW-6 Shri Rajeev Kumar, Social Security Officer, ESIC Parwanoo has stated that as per summoned record Asla Security Services had deposited ESI contribution in respect of Balwant Rai, Nattu Ram, Munna Lal and Nirmala Devi from 1-10-2006 to 31-3-2007 and the record brought by him is Ex. RW-6/A (58 leaves). When cross-examined on behalf of respondent No.1 he expressed his ignorance that who had deposited the ESI contribution with ESI Corporation and as to whether any enquiry has been conducted regarding non-deposit of the ESI contribution after Sept., 2008. In cross-examination, on behalf of the petitioner he denied that any person can deposit the ESI contribution with respect to the ESI code number of Asla Security. He admitted that they do not enquire about the person who deposits the contribution by way of challan. He admitted that after March, 2007, no contribution was deposited by the Asia Security of above said workers. He further admitted that is mandatory for every employer to deposit the ESI contribution in the corporation with respect to the workers on their rolls.

20. RW-7 Shri Agya Ram Sharma has stated that he was working as security guard in M/s Asla Security Services *w.e.f.* the year 2003 till 2007 and thereafter as security supervisor till the year, 2008 and he had been authorized to give statement on behalf of Asla Security Services *vide* authority letter Ex. RW-7/A. He had not brought the summoned record as the same was deposited by him with Mr. Balwinder Singh, Manager (HR) of Federal Mogul Bearing India Ltd. on 1-8-2008. In cross-examination on behalf of petitioner he admitted that the petitioner was working as sweeper in the factory of respondent No.2 prior to his engagement. He further admitted that the petitioner was under the control and supervision of respondent No.2 and all the registers and adult workers register were in the custody of respondent No.2 and the attendance of the petitioner was used to be marked by him in the office. The respondent No.2 company used to pay all the cheques in the name of Asla Security Services for payment of wages and the same were disbursed by Mr. A.S. Lali of Asla Security Services in the presence of Mr. G.P. Kala, Assistant Manager, HR of respondent No.2. He admitted that the petitioner was working in the company even after 1-8-2008.

21. After the closer scrutiny of the record of the case, it has become clear that the petitioner was working as safai karamchari in the premises of the respondent No.2 company and her services were terminated *w.e.f.* 8-9-2009. It is also not disputed that the respondent No.2 company had a certificate of registration from the prescribed authority and the respondent No.1 had the license issued by the competent authority to deploy the contract labour as per the provisions of sections 7 & 12 of the Contract labour (Regulation and Abolition Act). It is also

clear that *vide* agreement dated 25-3-1991 Ex. RW-4/B, M/s Vikram Services Parwanoo had entered into an agreement with the respondent No.1 M/s Asla Security Services *vide* which the respondent No.1 undertook to provide contract labour for security, housekeeping service etc. It has also become clear that *vide* agreement dated 5-4-1991, Ex. RW-4/C, the respondent No.1 undertook to provide the contract labour to Gabriel India Ltd., for security, housekeeping services, courier services etc., from time to time. RW-1 admitted in cross-examination that the agreements Ex. RW-4/B and Ex. RW-4/C, bear the signatures of his father who had died in a road accident. It is also not disputed that Gabriel India Ltd., (engine bearing division) was demerged from Gabriel India Ltd., into a separate company *i.e.* M/s Anand Engine Components in March, 2007. *Vide* letter dated 5-10-2007 Mark Z-2, M/s Anand Engine Components Ltd., had offered the contract to respondent No.1 for providing security services with the stipulation that the contract would be valid upto 31-12-2008 and it has further been stipulated therein that the agreement shall automatically expire unless and until further extended on mutually agreed terms and conditions. In March, 2008 M/s Federal Mogul Components took controlling interest in Anand Engine Components and renamed as Federal Mogul Bearings India Ltd. RW-4 Shri Balwinder Singh, Manager HR stated in his affidavit Ex. RW-4/A that the petitioner was never an employee of respondent No.2 and only respondent No.1 was maintaining attendance and leave registers, over time register and was complying with all the labour laws, legislation and filling all the returns under the labour laws including the payment of ESI and EPF. He further deposed that the entire supervision and control over the contract labour was of respondent No.1 and its supervisors. RW-1 admitted in cross- examination that his father had entered into an agreement with Anand Engine Components and Gabriel India Ltd., to provide contractual labour for security, housekeeping etc., and the said contract came to an end in the year, 2008. He also admitted that the respondent No.1 was paying wages, maintaining the entire record under the labour laws, making payments of ESI, EPF to the contractual employees deputed with Gabriel and Anand Engine Ltd. Thus, the evidence and material on record particularly the admission of RW-1 indicates that the respondent No.1 had a complete control over the petitioner till 31-12-2008 as it used to disburse the salaries to the workers, maintain the entire records under the labour laws and make the contribution towards ESI and EPF of the contractual workers deputed with respondent No.2. Hence, it can safely be held that the petitioner was the employee of respondent No.1 contractor who deployed her with respondent No.2 company till 31-12-2008 when the contract between the respondent No. 2 company and respondent No.1 came to an end.

22. From the perusal of material on record it has become clear that the services of the petitioner were terminated *w.e.f.* 8-9-2009 whereas the contract between respondent No.1 and respondent No.2 had expired on 31-12-2008. Now, the question which arises for consideration before this Court, as to whether the petitioner was the employee of respondent No.1 or the employee of respondent No.2 after the termination of contract *i.e* 31-12-2008. RW-1 stated in his evidence by way of affidavit that the contract between respondent No.1 and respondent No.2 expired on 31-12-2008 and thereafter it was not renewed further and the services of the petitioner were hired by respondent No.2 after the termination of the contract on 31-12-2008 and respondent No.1 had never terminated the services of the petitioner *w.e.f.* 8-9-2009. Though, the case of the respondent No.2 is that after 31-12-2008 the services of the petitioner remained continued as per common understanding with the contractor, however, to substantiate its case no cogent and satisfactory evidence has been led by the respondent No.2. RW-4 admitted in cross-examination that no contract was signed in writing with Asla Security Services after 31-12-2008 but the services of the petitioner were continued as per common understanding with the contractor. However, his statement to this effect is not worthy of credence as no company would have a common oral understanding with the contractor in the absence of anything in writing with respect to the continuation of the services of the employees/workers. The case of respondent No.2 is that vide letter dated 7-9-2009 Ex. RW-3/E it was communicated to the respondent No.1 that as the agreement for providing contract labour has not been extended as

such respondent No.1 need not to deploy labour to respondent No.2 *w.e.f.* 8-9-2009. However, admittedly this letter has neither been sent through registered post nor signatures of the contractor were obtained acknowledging the receipt of the same as such no benefit can be derived by the respondent No.2 from the aforesaid letter. Moreover, no plausible explanation has been given by the respondent No.2 as to how the services of the petitioner were being continued after 31-12-2008 despite the fact that the contract with respondent No.1 stood expired on 31-12-2008. It has been specifically stipulated in the letter dated 5-10-2007 Mark Z-2 that the contract would be valid upto 31-12-2008 and it shall automatically expire unless and until further extended on mutually agreed terms and conditions. It is the admitted case of the respondent No.2 that no contract was signed after 31-12-2008. The learned counsel for the respondent No.2 vehemently argued that even after 31-12-2008, the respondent No.1 was paying wages to the petitioner and also was making the contribution towards ESI and EPF account of the petitioner and in this respect he placed reliance upon the bills allegedly raised by Asla Security Services alongwith the challans of PF, ESI Ex. RW-3/A to RW-3/P which were produced by RW-3, the Finance Executive of respondent no.2. The bills Ex. RW-3/A to Ex. RW-3/L pertain to the period from May, 2008 to December, 2008 whereas the bill Ex. RW-3/M pertains to March, 2009, Ex. RW-3/N pertains to June, 2009, Ex. RW-3/O pertains to July, 2009 and Ex. RW-3/P pertains to August, 2009. However, these bills have not been proved in accordance with law as admittedly these bills have not been prepared by RW-3 and he also admitted in cross-examination that he was not aware as to who had signed and submitted the bills Ex. RW-3/A to Ex. RW-3/P. Moreover, the originals of these bills have not been produced in the Court. Therefore, no credence can be attached to these bills and no benefit can be derived by respondent No.2 from the aforesaid bills. RW-2/1 Shri Rishabh, from the office of PF Chandigarh had produced the EPF record of the workers *w.e.f.* April, 2009 to 31-3-2010 and the same is Exhibited as Ex. RW-2/1/B. However, in cross-examination he admitted that he was not aware as to who had deposited the amount of EPF in their office. Therefore, from the entire statement of RW-3, it cannot be said that after 31-12-2008, the amount of EPF pertaining to the petitioner was being deposited by respondent No.1. RW-6 an official from ESIC Parwanoo had deposed that M/s Asla Security Services had deposited the ESI contribution in respect of petitioner *w.e.f.* 1-10-2006 to 31-7-2007 as per record Ex. RW-6/A and he further deposed that the rest of record is not available. He also admitted in cross-examination that after March 2007 no contribution was deposited by the Asla Security Services with respect to the petitioner. Therefore, from his statement, it is clear that amount of ESI pertaining to the petitioner had not been deposited by respondent No.1 after 31-12-2008. There is no other evidence on record to suggest that the salary/wages to the petitioner were being paid by the respondent No.1 after 31-12-2008. Similarly, there is no satisfactory evidence on record to suggest that the respondent No.1 was making the contribution towards ESI and EPF of the petitioner after 31-12-2008. Therefore, taking into consideration the aforesaid facts and various attending circumstances, it is clear that the respondent No.1 had no role to play after 31-12-2008 so far as the petitioner is concerned and the petitioner had been working continuously with respondent No.2 in its premises after 31-12-2008 till the time of her termination *i.e.* 8-9-2009 and as such the petitioner will have to be treated as the employee of respondent No.2 company after 31-12-2008.

23. It has been proved on record that the petitioner had been in continuous service with respondent No.2 after 31-12-2008. It is not disputed that the petitioner had completed 240 days in twelve calendar months preceding her termination. It has also become clear that neither any chargesheet was issued to the petitioner nor any enquiry was conducted against her prior to her termination. It is also an admitted fact that before terminating her services neither any notice had been issued to the petitioner nor she was paid any compensation by respondent No.2. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent No.2 to have complied with the provisions of Section 25- F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with

those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent No.2 has failed to comply with the provisions of Section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd.,** Vs. **Mackinnon Employees Union**, the Hon'ble Apex Court has held as under:

> **"34. ……The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant- Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."**

24. In the present case also as observed aforesaid, the respondent No.2 has failed to comply with the provisions of Section 25-F of the Act before terminating her services. Hence, In view of the law laid down by the Hon'ble Supreme Court (*supra*) and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 8-9-2009 by the respondent no.2 without holding enquiry and without serving chargesheet and that too without complying with the provisions of section 25-F of the Act, is illegal and unjustified.

25. Therefore, in view of my foregoing discussion as it has been held that the services of the petitioner *w.e.f.* 8-9-2009 had been illegally terminated by respondent No. 2, hence, it has to be seen as to what relief of service benefits the petitioner is entitled from respondent No. 2. It is by now well settled that if the termination of employee is found to be illegal, the relief by way of reinstatement with back-wages is not automatic. The Hon'ble Supreme Court in **Santosh Kumar Seal and others reported in 2010 LLR 677: 2010 III CLR 17 SC,** has held that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that mandatory compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

26. **In Jagbir Singh** Vs. **Haryana State Agricultural Marketing Board (2009) 15 SCC 327, the Hon' ble Supreme Court has held that:**

> "It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and maybe wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

27. In the present case, even though the termination of the petitioner is held to be illegal but her reinstatement would not be appropriate relief as it has been stated at bar by the learned counsel for the respondent No.2 that now the work of cleaning and sweeping of the unit has been given on outsource basis. Therefore, in such a situation it would not be appropriate to make

the order for reinstatement of the petitioner in the present case. Hence, taking into account all the facts and circumstances of the case, the ends of justice would be met, if the lump sum compensation is awarded to the petitioner. Therefore, in my view the petitioner is entitled to receive a suitable, appropriate, just and equitable compensation from the respondent No.2. Since, the services of the petitioner have been terminated illegally by the respondent No.2 company, therefore, in such a situation, it would be quite reasonable and justified if lump sum compensation of ₹ 3,00,000/- (₹ Three lakhs only) is awarded to the petitioner. Consequently, both these issue are decided in favour of the petitioner and against the respondent No. 2.

Issue No.3 :

28. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issues no. 4&5 :

29. During the course of arguments, these issues have not been pressed by the learned counsel for respondents. Hence, these issues are decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is partly allowed and as such the respondent No.2 company is directed to pay ₹ 3,00,000/- (₹ Three lakhs only) as lump sum compensation to the petitioner within a period of three months from today failing which the same shall carry interest @ 9% per annum from the date of award till its realization. The reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 30th Day of August, 2017.

(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal-cum- *Labour Court, Shimla.*

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM**- LABOUR COURT, SHIMLA**

Ref. No. 21 of 2012

Instituted on 1-6-2012

Decided on 28-8-2017

Sandeep Singh S/o Shri Rattan Singh r/o VPO Bhapral, Tehsil Ghumarwin District Bilaspur, H.P. . .*Petitioner.*

Vs.

M/s Colgate Palmolive India Ltd., Jharmajari Baddi, District Solan, HP. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri A.K Sharma, AR

For respondent : Shri Rahul Mahajan, Advocate

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether termination of services of Mr. Sandeep Singh s/o Shri Rattan Singh Thakur r/o Village and P.O Bhapral, Tehsil Ghumarwin, District Bilaspur, HP as Technician by the Managing Director M/s Colgate Palmolive India Ltd. #78 EPIP, Phase-1, Jharmajri, Baddi, District Solan, HP w.e.f. **21.09.2010 after conducting an enquiry is proper and justified? If not, what amount of back wages, past service benefits, seniority and amount of compensation the above worker is entitled to from the above employer?"**

2. Briefly, the case of the petitioner is that *w.e.f.* 15-5-2006, he was employed with the respondent as technician and was drawing last wages of ₹ 14500/- per month and that he had completed the service of more than 240 days continuously before his illegal termination. It is further stated that the services of the petitioner had been terminated on 21-9-2010 in an unlawful manner and enquiry conducted by the respondent was not fair and proper as the false charges were framed with malafide intention. That the petitioner served a demand notice dated 25-2-2011 to the respondent for reinstatement and a copy of the same was sent to Labour Officer but due to the adamant attitude of the respondent, the matter could not be settled. Against, this back-drop a prayer has been made that the petitioner be reinstated in service including all consequential service benefits along-with back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the reference/petition is neither competent nor maintainable. On merits, it has been asserted that initially the petitioner was given the offer of trainee-ship as trainee technician *vide* letter dated 11-5-2006 and on completion of the period of trainee ship he was appointed on probation as technician and he was confirmed as technician vide letter dated 1-12-2007. It is further asserted that the work and conduct of the petitioner was not satisfactory as he was in the habit of over staying leave and used to absent frequently without intimation and sanction of leave and his services were dismissed after conducting a just, fair and proper domestic enquiry in respect of charges leveled *vide* chargesheets dated 23-6-2010 and 25-6-2010 which stood proved and even the enquiry officer was the independent person who conducted the enquiry in a fair and proper manner. It is also asserted that the petitioner was served with chargesheet dated 23-6-2010 and 25-6-2010 and the petitioner replied both the chargesheets which were not found satisfactory and thereafter an enquiry was conducted and the petitioner participated in the enquiry and sufficient opportunities were granted by the enquiry officer to the petitioner to put forth his case, examine his witnesses and cross-examine each other witnesses. The principles of natural justice and the procedure as prescribed in the Model Standing Order/Industrial Employment Standing Orders, HP Rules 1973, were followed in conducting the enquiry and the petitioner signed each and every day enquiry proceedings. The enquiry officer submitted his enquiry report wherein the charges leveled against the petitioner stood

proved and a copy of enquiry report was also served upon him and thereafter his services were dismissed on 21-9-2010 by giving full & final amount of ₹ 11333/-. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. *vide* order dated 15-1-2014, this Court framed the following preliminary issues:

1. Whether the domestic enquiry conducted against the petitioner is unfair and violative of the principles of natural justice as alleged? . .*OPP.*

2. Relief.

5. *Vide* order dated 10-8-2017, this Court decided the preliminary issue in favour of the respondent and against the petitioner and it was held as under:

> **"In view of my foregoing discussion on preliminary issue, since, the enquiry has been held to be fair and proper, therefore, let the parties be heard on the point as to whether the punishment of dismissal imposed by the respondent upon the petitioner is dis-proportionate to the gravity of misconduct committed by him".**

6. I have heard the AR for the petitioner and learned counsel for the respondent on the quantum of punishment and have also gone through the record of the case carefully.

7. As noted above, preliminary issue has already been decided in favour of the respondent management and against the workman holding that the enquiry conducted by the management against the workman was fair and proper and in accordance with principles of natural justice and the charges leveled against the petitioner stood duly proved. Hence, the only question to be decided by this Court is whether, punishment of dismissal imposed upon the petitioner/workman in respect of the charges proved against him in the enquiry is justified or not and whether the punishment of dismissal imposed by the respondent upon the petitioner is dis-proportionate to the gravity of misconduct committed by him.

8. It is by now well settled that after introduction of Section 11-A of the Industrial Disputes Act, Labour Court has the power to set-aside the order of discharge or dismissal or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal, as the circumstances of the case may require. However, it cannot be said that powers of the Labour Court under Section 11-A of the Act, are absolute or un-qualified. The Labour Court can exercise the said powers only when it is satisfied that order of dismissal or discharge was not justified.

9. In **Mahindra and Mahindra Ltd. versus N B Naravade etc., AIR, 2005, SC 1993** it has been held by the Hon'ble Apex Court as under:

> **"20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the labour court/Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the concerned workman is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the**

conscience of the court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment"

10. In **L & T Komatsu Ltd.** versus **N. Udaya Kumar (2008) 1 SCC 224,** the Hon'ble Supreme Court has relied upon its earlier decision in **LIC of India versus R Dhandapani, AIR 2006 SC, 615,** wherein, it was held as under:

"It is not necessary to go into in detail regarding the power exercisable under Section 11-A of the Act. The power under said Section 11-A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words `disproportionate' or `grossly disproportionate' by itself will not be sufficient. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability. (See: Kerala Solvent Extractions Ltd. v. A. Unnikrishnan and Another, 1994 (1) SCALE 631.

Though under Section 11-A, the Tribunal has the power to reduce the quantum of punishment it has to be done within the parameters of law. Possession of power is itself not sufficient; it has to be exercised in accordance with law."

11. In **M. P Electricity Board** versus **Jagdish Chandra Sharma, in (2005) 3 SCC 401,** wherein, the Hon'ble Supreme Court has held as under:

" 20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the labour court/Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the concerned workman is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which

may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment.

12. It is clear from the aforesaid decisions of the Hon'ble Supreme Court that although this Court has ample powers to interfere with the punishment imposed upon the workman, the power is not arbitrary and it is to be exercised judicially and in accordance with law. The punishment imposed upon the workman can be interfered only if the Court is satisfied that the punishment is wholly and shockingly disproportionate to the nature of misconduct proved against the workman or if there are any mitigating circumstances including the past conduct of the workman which may persuade the Court to reduce the punishment.

13. Admittedly, two charge sheets have been issued against the petitioner. *Vide* chargesheet Ex. PR-4 dated 23-6-2010, the charges leveled against the petitioner were that the petitioner had used abusive language and made derogatory remarks against Parveen Kumar and caused grave injuries to him on 21-6-2010 while traveling in the company bus. In the chargesheet dated 25-6-2010 Ex. PR-6, the charges leveled against the petitioner are that on the next date of incident dated 22-6-2010, the petitioner was advised to remain in the visitor room in order to enquire from him further details of incident dated 21-6-2010 and to arrange counseling, however, the petitioner left the visitor room and went straight way to the work place of Parveen Kumar and asked him to withdraw his complaint and substitute the version as given by him in the complaint by stating that Mr. Parveen Kumar had sustained injuries by a fall so that the respondent does not proceed against him and he (petitioner) also threatened Praveen Kumar that in case of failure, he had to face dire consequences. Thereafter, an enquiry was conducted against the petitioner and the enquiry officer had given his findings against him in respect of both the chargesheets and the charges leveled against the petitioner stood proved. As already observed this Court has given its findings on preliminary issue on 10-8-2017 that the domestic enquiry conducted against the petitioner by the respondent company was fair and proper and the charges leveled against the petitioner stood duly proved.

14. In the facts and circumstances of the present case, in my opinion the action of dismissal of the workman cannot be said to be unjustifiable. In **(2005) 3 SCC 331, Muriadih Colliery of Bharat Coking Coal Ltd** Vs. **Bihar Colliery Kamgar Union through workmen**, it has been held by the Hon'ble Apex Court that an act of violence is an act of grave misconduct calling for stringent punishment**.** The relevant portion of the aforesaid judgment reads as under:

"15. Similarly in the case of the Management of Tournamulla Estate Vs. **Workmen (1973) 2 SCC 502, this Court while considering the denial of gratuity to a dismissed workmen held:**

> **"If a workman is guilty of a serious misconduct such as acts of violence against the management or disorderly behaviour in or near the place of employment, which though not directly causing damage, is conducive to grave indiscipline, then his gratuity can be forfeited in its entirety. "**

16. From the above it is clear that this Court has considered an act of violence as an act of grave misconduct calling for stringent punishment."

15. In **(2005) 3 SCC 401, M.P Electricity Board Vs. Jagdish Chandera Sharma** it has been held by the Hon'ble Apex Court that discipline at the work place in an organization like the employer herein, is the *sine qua non* for the efficient working of the organization. When an

employee breaches such discipline and the employer terminates his services, it is not open to a Labour Court or an Industrial Tribunal to take the view that the punishment awarded is shockingly disproportionate to the charge proved. The relevant portion of the aforesaid judgment reads as under:

> **"8. It may also be noticed that in Orissa Cement Ltd.** vs. **V. Adikanda Sahu and in New Shorrock Mills** vs. **Maheshbhai T. Rao, this Court held that use of abusive language against a superior, justified punishment of dismissal. This Court stated "punishment of dismissal for using abusive language cannot be held to be disproportionate". If that be the position regarding verbal assault, we think that the position regarding dismissal for physical assault, must be found all the more justifiable. Recently, in Employers, Management, Muriadih Colliery M/s BCCL Ltd.** v. **Bihar Colliery Kamgar Union, Through Workmen [JT 2005 (2) SC 444] this Court after referring to and quoting the relevant passages from Management of Krishnakali Tea Estate** v. **Akhil Bharatiya Chah Mazdoor Sangh & Anr. [2004 (7) SCALE 608] and The Management of Tournamulla Estate** Vs. **Workmen, (1973) 2 SCC 502 held :**
>
> > **"The courts below by condoning an act of physical violence have undermined the discipline in the organization, hence, in the above factual backdrop, it can never be said that the Industrial Tribunal could have exercised its authority under Section 11(A) of the Act to interfere with the punishment of dismissal."**
>
> 9. **In the case on hand, the employee has been found guilty of hitting and injuring his superior officer at the work place, obviously in the presence of other employees. This clearly amounted to breach of discipline in the organization. Discipline at the work place in an organization like the employer herein, is** the sine qua non **for the efficient working of the organization. When an employee breaches such discipline and the employer terminates his services, it is not open to a Labour Court or an Industrial Tribunal to take the view that the punishment awarded is shockingly disproportionate to the charge proved. We have already referred to the views of this Court. To quote Jack Chan, "discipline is a form of civilly responsible behaviour which helps maintain social order and contributes to the preservation, if not advancement, of collective interests of society at large."**

Similarly, **in (2013) 10 SCC 185, Davalsab Husainsab Mulla** Vs. **North west Karnatka Road Transport Corporation**, the Hon'ble Apex Court has held that the extreme misbehaviour towards the higher officials and fellow employees cannot be dealt with lightly and any sympathy shown to a person of such mindset while working in an establishment will definitely cause more harm than good for the establishment and all others working therein. The relevant portion of the aforesaid judgment reads as under:

> **"14. We feel it appropriate to add one more instance such as the present one where an employee by violating the rules of the Corporation travelled without a valid ticket had the audacity to question the authority of the checking squad and posed a serious threat of taking away the life of the concerned Checking Inspector. Not stopping with that he went to the office of the higher official and created a ruckus in the office by throwing a challenge that he would indulge in a Satyagraha apart from abusing the concerned Checking Inspector in the presence of all other employees once again threatening to take away his life by burning him. Such an extreme misbehaviour towards the higher officials and fellow employees cannot be dealt with lightly and any sympathy shown to a person of such mindset while working in an**

establishment will definitely cause more harm than good for the establishment and all others working therein.

15. Therefore, in the case on hand, the conduct of the employee towards the establishment as well as its fellow employees and higher authorities was highly condemnable and, therefore, there was absolutely no scope for exercising the discretionary power vested in the Labour Court under Section 11A of the Act. The Labour Court, therefore, rightly declined to exercise the said jurisdiction vested in it in his favour. Unfortunately, the learned Judge by merely stating that the Labour Court had only considered the interest of the Corporation and not the interest of the employee set aside the said award which was correctly rectified by the Division Bench. The Division Bench was, therefore, well in order in having set aside the order of the Learned Single Judge and restoring the order of dismissal passed against the appellant. We too, therefore, do not find any scope to interfere with the order impugned in this appeal.

In the present case also it has been proved that the petitioner had assaulted his fellow employee and caused him grave injuries while travelling in the company bus resultantly three stitches had to be put by the Doctor and injection had to be given to control the pain. Moreover, the petitioner had also hit his fellow employee on the chest and even on the next date he (petitioner) threatened his fellow employee to withdraw his complaint and substitute the version as given by him otherwise he would have to face dire consequences and had also given threatening to him. The petitioner also admitted his guilt *vide* letter dated 24-6-2010 Ex. PR-5 and letter dated 14-7-2010 Ex. PR-7 and the charges stood duly proved against him after conducting the enquiry. Therefore, in my opinion the petitioner had committed serious misconduct relating to discipline and his act was sub-served to the discipline in this behalf. The respondent-management was completely justified in dismissing the petitioner from service. The punishment was proportionate to the serious misconduct alleged against him. Therefore, in view of the law laid down by the Hon'ble Apex Court and also in view of the gravity of the misconduct and the degree of culpability on the part of the petitioner, this Court does not find it proper to interfere in the punishment of dismissal imposed by the respondent/management upon the petitioner. Hence, it can safely be held that the termination of the services of the petitioner *w.e.f.* 21-9-2010 is proper and justified.

Relief:

As a sequel to my aforesaid discussion, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate Government for publication in official gazette. File after completion be consigned to the records.

Announced in the open Court today on this 28th day of August, 2017.

(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal-cum-*Labour Court, Shimla.*

TOWN AND COUNTRY PLANNING DEPARTMENT
HIMACHAL PRADESH
FORM -6
(*See* rule - 9)
NOTICE OF ADOPTION OF EXISTING LANDUSE MAP

Dated, the 6th March, 2018

No. PO(PLP)-T-16(Vol. I)/15-254.—Whereas, objections and suggestions were invited *vide* Notice No. PO(PLP)-T-16(Vol.I)/15 dated 12-04-2017 with respect to the Existing Land Use Map for Bir-Billing Special Area under sub-section (1) of section 15 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977); and

Whereas, objections and suggestions were received and the modifications have been made in the said Existing Land Use Map, wherever, required.

Now, therefore, in exercise of the powers vested under sub-section (3) of section 15 of the Act *ibid,* notice is given that the Existing Land Use Map for Bir-Billing Special Area is hereby adopted with modifications and a copy thereof is available for inspection during office hours in the following offices:—

1. The Chairman, SADA-cum-SDM**,** Baijnath,
   Tehsil Baijnath, Distt. Kangra,
   Himachal Pradesh**.**

2. The Planning Officer,
   Town Planning Office,
   Palampur, District Kangra, Himachal Pradesh.

The said Existing Land Use Map shall come into operation with effect from the date of publication of this Notice in the Official Gazette of Himachal Pradesh and it shall be conclusive evidence of the fact that the Map has been duly prepared and adopted.

Place: Palampur

Sd/-
(VIKAS SHUKLA),
Chairman
Special Area Development Authority,
Bir-Billing-cum-SDM, Baijnath,
Distt. Kangra, Himachal Pradesh.

LAW DEPARTMENT

NOTICE

Shimla-2, *the* 14th *March,* 2018

No. LLR-E (9)-3/2018-Leg.—Whereas, the following Advocates of District Bilaspur H.P. have applied for appointment of Public Notary in the places and areas mentioned against their names under rule 4 of the Notaries Rules, 1956:—

Sl. No.	Name of Advocate	Area for which they have applied for appointment of Notary
1.	Ms. Kusum Mehla, Advocate w/o Shri Pawan Kumar, r/o H.No.61-B, Main Market Bilaspur, District Bilaspur, H.P.	Sub-Division Bilaspur
2.	Sh. Rattan Chand, Advocate s/o Sh. Budhi Ram Bains, r/o Village Cheli, P.O. Tanbol, Tehsil Shri Naina Devi ji, District Bilaspur, H.P.	Sub-Division Shri Naina Devi ji
3.	Shri Nitin Kaundal, Advocate s/o Sh. Lekh Ram Kaundal, r/o Village Riri, P.O. Jukhala, Tehsil Sadar, District Bilaspur, H.P.	Sub-Division Bilaspur
4.	Shri Kamal Kaundal, Advocate s/o Sh. Prem Lal Kaundal, r/o H.No.27, Koserian Sector, Tehsil Sadar, District Bilaspur, H.P.	Sub-Division Bilaspur

Therefore, I undersigned in exercise of the power conferred *vide* Government Notification No. LLR-A(2)-1/2014-Leg. dated 1st July, 2017, hereby issue notice under rule 6 of the Notaries Rules, 1956, for the information of general public for inviting objections, if any, within a period of fifteen days from the date of publication of this notice in Rajpatra, H.P. against their appointment as Notary Public in the places mentioned against their names of their respective Sub-Divisions.

(Competent Authority),
DLR-cum-*Deputy Secretary (Law-Legislation).*

LAW DEPARTMENT

NOTICE

Shimla-2, *the* 14th *March,* 2018

No. LLR-E(9)-6/2018-Leg.—Whereas, the following Advocates of District Shimla H.P. have applied for appointment of Public Notary in the places and areas mentioned against their names under rule 4 of the Notaries Rules, 1956:—

1.	Shri Ritesh Achal Sharma, Advocate s/o Shri Jawahar Sharma, r/o Village Magawta, P.O. Kaina, Tehsil Jubbal, District Shimla, H.P.	Tehsil Jubbal
2.	Sh. Rakesh, Advocate s/o Sh. Krishan Dass, r/o Village Ghatroo, P.O. Halog (Dhami), Tehsil & District Shimla, H.P.	Sub-Division Shimla

Therefore, I undersigned in exercise of the power conferred *vide* Government Notification No. LLR-A(2)-1/2014-Leg. dated 1st July, 2017, hereby issue notice under rule 6 of the Notaries

Rules, 1956, for the information of general public for inviting objections, if any, within a period of fifteen days from the date of publication of this notice in Rajpatra, H.P. against their appointment as Notary Public in the places mentioned against their names of their respective Tehsil/Sub-Division.

(Competent Authority),
DLR-cum-*Deputy Secretary (Law-Legislation).*

नगर निगम धर्मशाला

अधिसूचना

दिनांक 20 फरवरी, 2018

क्रमांक ध.न.नि./एस.यू.एस.वी./डे.–एन.यू.एल.एम./2018–7803.––हिमाचल प्रदेश पथ विक्रेता (जीविका संरक्षण और पथ विक्रय विनियमन) नियम, 2016 अधिसूचना संख्या यू.डी.–अ(3)–13–2015–लूज, दिनांक 05–12–2016 के अध्याय 3–नगर विक्रय समिति, धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैं, संदीप कदम (आई.ए.एस.), आयुक्त, धर्मशाला नगर निगम, हिमाचल प्रदेश नगर विक्रय समिति धर्मशाला का गठन निम्नलिखित सदस्यों के साथ घोषित करता हूं :––

शासकीय सदस्य

अध्यक्ष	आयुक्त, धर्मशाला नगर निगम
स्वास्थ्य चिकित्सा अधिकारी का प्रतिनिधि	म.ओ.एच.कांगड़ा स्थित धर्मशाला
कलेक्टर का प्रतिनिधि	एस.डी.एम., धर्मशाला
योजना प्राधिकरण का प्रतिनिधि	योजना अधिकारी,(टी.सी.पी.) धर्मशाला
पुलिस पदधारी	सहायक पुलिस अधीक्षक, मुख्यालय, धर्मशाला
यातायात पुलिस का प्रतिनिधि	ए.एस.आई आई / सि यातायात, धर्मशाला
शासकीय सदस्य	सचिव, कनिष्ठ अभियन्ता, धर्मशाला नगर निगम
गैर–सरकारी सदस्य	
पार्षद, स्थानीय प्राधिकरण	ओमकार सिंह नेहरिया
पथ विक्रेताओं के प्रतिनिधि (मेक्लोढगंज)	रौशनी नेगी
	प्रिया शंकर
	नोरसंग शेरपा
पथ विक्रेताओं के प्रतिनिधि (कचेहरी अड्डा)	ठाकुर दास
	उषा रानी
	राजीव कुमार
फुट पथ विक्रेता संगति (मेक्लोढगंज)	कर्मा
	नईमा
	पेमा भुट्टी

गैर–सरकारी संगठन प्रतिनिधि	दावा रिन्चिन (टी.स.ओ.)
	अजीत नेहरिया (उप–प्रधान आई.टी.फ.ए)
समुदाय आधारित संगठन का सदस्य	सविता शर्मा (प्रधान–महासंघ ए.ल.फ)
व्यापार संगमों का सदस्य (मेक्लोढगंज)	नरेंदर पठानिया (प्रधान)
आवासीय कल्याण संगमो का सदस्य	बलदेव सिंह राना (प्रधान डी.सी.र.डव्ल.ए)
अग्रणी राष्ट्रीयकृत बैंक का प्रतिनिधि	पी.न.ब., अग्रणी जिला प्रबंधक, कांगड़ा स्थित धर्मशाला

आयुक्त,
हस्ताक्षरित / –
धर्मशाला नगर निगम।

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MUNICIPAL CORPORATION DHARAMSHALA

NOTIFICATION

Date 20th February, 2018

No. DMC/SUSV/DAY-NULM/2018-7803.—In exercise of the powers conferred by Chapter 3-Town vending Committee, Section 4 of Himachal Pradesh Street Vendors (Protection of Livelihood and Regulation of Street Vending) Rules, 2016, Notification –UD-A(3)-13/2015-loose Shimla-171002, dated 05/12/2016, I, Sandeep Kadam (IAS), Commissioner, Dharamshala Municipal Corporation, Himachal Pradesh, is pleased to constitute Town Vending Committee, Dharamshala with the following members:—

Official Members

Chairperson	Commissioner, DMC
Representative of CMO	MOH, Kangra at Dharamshala
Representative of Collector	SDM, Dharamshala
Representative of Planning Authority	Planning Officer (TCP)
Representative of Planning Authority	Planning Officer (TCP)
Police Official Representative	Add.SP.HQ. Dharamshala
Representative of Traffic Police	ASI I/C Traffic, Dharamshala
Secretary	Junior Engineer, DMC
Non Official Members	
Councilor DMC	Onkaar Nehria
Street Vendors Association Mcleodganj	Roshni Negi
	Priya Shankar
	Norsang Sherpa

Street Vendors Association Kachehri Adda	Thakur Dass
	Usha Devi
	Rajeev Kumar
Foot Path retailer Association	Karma
	Nyima
	Pema Bhutti
Non Government Organization	Dawa Rinchen.(TSO)
	Ajit Nehria (Senior Vice President ITFA)
Community Based Organization	Savita Sharma.(President) Mahasangh ALF
Vyapar Mandal, Mcleodganj.	Narendra Pathania (President)
Resident Welfare Association	Baldev Singh Rana (President,DCRWA)
Representative of Nationalized Lead Bank	PNB, Lead District Manager, Kangra at Dharamshala.

Sd/-
Commissioner,
Dharamshala Municipal Corporation.

MUNICIPAL COUNCIL BADDI DISTRICT SOLAN (H. P.)

NOTIFICATION

8th March, 2018

No. MC Baddi/SWM/byelaws/2018-423-32.—The Executive Officer Municipal Council Baddi in exercising the powers conferred in Section 164 and by clause (6) of section 164 of HP Municipal Act, 1994 as amended from time to time hereby notify for collect, disposal & segregation of waste at source and its door to door collection system in the Municipal Council Baddi District Solan (HP) as under:—

1. It is mandatory for all the waste generators (Households, commercial establishments, organizations etc.) to engage door to door waste collectors.

2. Rates for door to door waste collection to be paid by the waste generators (Households, commercial establishments, organizations etc.) to the door to door waste collectors is as under:—

Sl. No.	House/ Establishment	Rates
1.	Households/one family/in pooled colony, apartment, Industrial colony, etc.	₹50/- per month
2.	Households in slums	₹30/- per month
3.	Booths/Khokhas.	₹50/- per month

4.	Rehri/Stalls etc.	₹50/- per month
5.	Commercial establishments/ Shops	₹150/ per month
6.	Eating places (Dhaba/sweet shops /coffee house etc.)	₹150/ per month
7.	Guest House, Hostel, Paying guest House	₹800/- per month
8.	Restaurants, Hotels, etc.	₹800/- per month
9.	Sarai, Dharamshala	₹800/- per month
10.	Commercial Offices, Bank, Insurance Offices	₹500/- per month
11.	Coaching classes Centre, Educational institutes, play school etc.	₹500/- per month
12.	Marriage halls/ festival halls, exhibition, fair, circus, Cinema halls etc.	₹2000 per month
13.	Commercial, religious, socio cultural events, political rallies, protests and demonstrations etc.	₹1000 per function
14.	Taxi Stand, Auto Stand, Bus Stand, Truck stands, Railway stations and Vehicle parking etc.	₹1000/- per month
15.	Clinic, dispensary, hospitals, laboratories (except hazardous/medical waste)	₹1500/- per month
16.	Industrial units upto area 500Sqm	₹500/- per month
17.	Industrial units area 501 to 1000 Sqm.	₹1000/- per month
18.	Industrial units area 1001 to 5000 Sqm.	₹2500/- per month
19.	Industrial units area above 5001 Sqm.	₹5000/- per month

i. These rates have been approved by the General House of the Municipal Council Baddi.

ii. These charges will be collected by the Door to Door waste collectors directly from the waste generators (Households, Commercial Establishments/ Organizations etc.).

iii. These charges shall be paid by the waste generators (Households, commercial establishment, organization etc.) to the Door to Door waste collectors for providing services every day except Sundays. In case of non-collection by the Door to Door waste collector, proportionate deductions can be made in payments.

iv. The Door to Door waste collectors have to accept entire dry and wet waste from waste generators (Households, commercial establishments / organizations etc.).

3. The notified rates shall only apply for those door to door waste collectors who have been duly certified by the Municipal Council Baddi. In case the waste generator (Households, commercial establishments, organizations etc.) is not taking the services of the door to door waste collector, the notified rates shall be collected by the Municipal Council Baddi.

4. The certified door to door waste collectors will get following one time support from Municipal Council, Baddi:—

(a) Free repair of cycle cart

(b) Free provision of bins for collection of garbage in a segregated manner

(c) Free provision of gloves, fluorescent Jacket, mask & Cap.

5. In each Sector the door to door waste collector will nominate a team leader who will ensure collection of waste on regular basis & in a segregated manner.

6. The Junior Engineer/ Sanitary Inspector will do the regular monitoring to ensure smooth functioning of waste collection & transportation system in a segregated manner.

7. Every waste generator (Households, commercial establishments, organizations etc.) shall keep waste in segregated manner that is wet & bio-degradable waste in green bin and dry & non-biodegradable waste in blue bin. In case of non-segregation of waste by the waste generator, the door to door waste collector should refuse to take the waste and inform the nominated team leader who will further inform the Junior Engineer/ Sanitary Inspector of the Council.

8. Door to door waste collector shall collect & transport the waste in a segregated manner & deposit the same in the designated collection point of the Municipal Council Baddi.

9. Waste generator (Households, commercial establishments, organizations etc.) may inform the Junior Engineer/Sanitary Inspector about the existing door to door waste collector whose services they are taking, for certification and necessary action.

10. In case of non-availability of door to door waste collectors in any area, the waste generator (Households, commercial establishments, organizations etc.) may inform the Junior Engineer/Sanitary Inspector, who will assign door to door waste collectors to that area.

The previous notification No.MC Baddi/SWM/byelaws/ 2018-379-86 dated 28-02-2018 has been repealed.

This Notification shall come into force from the date of its publication in the Rajpatra (e-Gazette), Himachal Pradesh.

Sd/-
(AJMER SINGH THAKUR)
Executive Officer,
Municipal Council Baddi,
District Solan (H.P.).

FINANCE DEPARTMENT

NOTIFICATION

Shimla-2, *the* 16th *March,* 2018

No. Fin-2-C-(12)-3/2017.—Government of Himachal Pradesh hereby notifies the sale of Himachal Pradesh Government Stock (securities) of **4-year** tenure for an aggregate amount of **₹ 300.00 crore** (Nominal). The sale will be subject to the terms and conditions spelt out in this notification (called Specific Notification) as also the terms and conditions specified in the General Notification No. Fin-2-C(12)-11/2003, dated July 20, 2007 of Government of Himachal Pradesh.

Object of the loan

1. (*i*) The proceeds of the State Government Securities will be utilized for the development programme of the Government of Himachal Pradesh.

(*ii*) Consent of Central Government has been obtained to the floatation of this loan as required by Article 293 (3) of the Constitution of India.

Method of Issue

2. Government Stock will be sold through the Reserve Bank of India, Mumbai Office (PDO) Fort, Mumbai-400 001 by auction in the manner as prescribed in paragraph 6.1 of the General Notification No.Fin-2-C(12)-11/2003, dated July 20, 2007 at a coupon rate to be determined by the Reserve Bank of India at the yield based auction under multiple price formats.

Allotment to Non-Competitive Bidders

3. The Government Stock upto 10% of the notified amount of the sale will be allotted to eligible individuals and institutions subject to a maximum limit of 1% of the notified amount for a single bid as per the Revised Scheme for Non-Competitive Bidding Facility in the Auctions of State Government Securities of the General Notification (Annexure-II).

Place and Date of Auction

4. The auction will be conducted by the Reserve Bank of India, at its Mumbai Office, Fort, Mumbai-400 001 on **March 20, 2018.** Bids for the auction should be submitted in electronic format on the Reserve Bank of India Core Banking Solution (E-Kuber) System as stated below on **March 20, 2018**.

(*a*) The competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) System between 10.30 A.M. and 12.00 .PM.

(*b*) The non-competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) System between 10.30 A.M. and 11.30 A.M.

Result of the Auction

5. The result of the auction shall be displayed by the Reserve Bank of India on its website on the same day. The payment by successful bidders will be on **March 21, 2018.**

Method of Payment

6. Successful bidders will make payments on **March 21, 2018** before close of banking hours by means of cash, bankers' cheque/pay order, demand draft payable at Reserve Bank of India Mumbai/New Delhi or a cheque drawn on their account with Reserve Bank of India, Mumbai(Fort)/New Delhi.

Tenure

7. The Stock will be of **4-year** tenure. The tenure of the Stock will commence on **March 21, 2018**.

Date of Repayment

8. The loan will be repaid at par on **March 21, 2022.**

Rate of Interest

9. The cut-off yield determined at the auction will be the coupon rate percent per annum on the Stock sold at the auction. The interest will be paid on **September 21** and **March 21.**

Eligibility of Securities

10. The investment in Government Stock will be reckoned as an eligible investment in Government Securities by banks for the purpose of Statutory Liquidity Ratio (SLR) under Section 24 of the Banking Regulation Act, 1949. The stocks will qualify for the ready forward facility.

By order and in the name of the Governor of Himachal Pradesh

Addl. Chief Secretary to the Government of Himachal Pradesh,
Finance Department.

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है